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Title 13

ECONOMIC DEVELOPMENT

Part I. Financial Incentive Programs

Chapter 1. General Provisions

Subchapter A. General Rules

§101. Board of Commerce and Industry

A. The principal offices of the board shall be at the Louisiana Department of Economic Development, Office of Commerce and Industry, located at One Maritime Plaza, Baton Rouge, LA, or at such other place as the board may determine.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2241 (October 2000).

§103. Board Membership

A. Number and Qualifications of Board Members. The board shall consist of 20 members, unless R.S. 51:923 is amended to provide for a different number of board members. Fifteen members shall be appointed by the governor from among representatives of the major economic groups within the state of Louisiana, one who shall be an elected municipal official appointed by the governor from a list of three names submitted by the Louisiana Municipal Association and one who shall be an elected police juror, councilman, commissioner or parish president appointed by the governor from a list of names submitted by the Louisiana Police Jury Association. In addition, the governor, or his designee, the lieutenant governor, or his designee, and the Secretary of the Department of Economic Development, or his designee, shall be ex officio members of the board with full right to participate in and vote on all matters.

B. Appointment. Each appointment by the governor shall be submitted to the senate for confirmation and shall again be submitted by the governor to the senate for confirmation every two years after the initial confirmation.

C. Term. The members, other than the governor, lieutenant governor and the Secretary of the Department of Economic Development, shall serve for terms which shall be concurrent with the term of the governor making the appointments. The governor and lieutenant governor shall serve during the term of office of each. Other than the three ex officio members above, all other members shall continue to serve until their successors are appointed and take office.

D. Vacancy. A vacancy occurring for any reason shall be filled in the manner provided in §103.A hereof.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2241 (October 2000).

§105. Compensation of the Board

A. Members of the board shall serve without compensation. Each member shall be entitled to reimbursement for the actual and necessary expenses incurred in the performance of official duties.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§107. Meetings of the Board

A. Open Meeting. All meetings of the board shall be subject to the Open Meetings Law as provided in R.S. 42:1 et seq.

B. Annual Meeting. The year of the board shall begin February 1 each year. The meeting following the beginning of the year the board shall elect its officers who shall serve until the next annual meeting or until their successors are elected.

C. Regular Meetings. The board may meet as often as it deems necessary provided that there shall be not less than four regular meetings each year.

D. Special Meetings. A meeting may be called by the chairperson or by joint call of at least three of its members, to be held at the principal office of the board, or at such other place as may be fixed by the board.

E. Quorum. Excluding any vacancies on the board, a majority of the members of the board shall constitute a quorum. In the absence of a quorum, a majority of the members present at the time and place of any meeting may adjourn such meeting from time to time, with notice given in accordance with the Open Meeting Law.

F. Parliamentary Procedure. Unless otherwise provided by law to the contrary, all meetings of the board shall be conducted in accordance with *Robert's Rules of Order*.

G. Meeting Place. The board, its committees and subcommittees, shall hold its meetings at the principal office of the board, or at such other place as may be fixed by the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§109. Notice

A. Notice by Mail. Under the provisions of Louisiana law or these rules, whenever notice is given to any member it shall not be construed to mean personal delivery of notice. Notice will be considered to be given in writing on the day the written notice is deposited in a post office with such notice bearing the member's address as it appears in the records of the board.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§111. Officers

A. The officers of the board shall be elected by the members of the board and shall be a chairperson and a vice-chairperson and such other officers as the board shall consider necessary. There shall be no prohibition against officers succeeding themselves.

1. Chairperson. The chairperson shall be a member of the board and shall preside at all meetings of the board at which he or she is present. The chairperson shall perform such other duties and have such other powers as from time to time may be assigned to the office by these rules or by the board. Election of the chairperson shall be at the annual meeting or such other time as may be necessary. The chairperson shall hold office until the next annual meeting.

2. Vice-Chairperson. The vice-chairperson shall be a member of the board. At the request of the chairperson or in the event of his absence or disability, the vice-chairperson shall perform all duties of the chairperson, and when so acting, shall have all the powers of, and be subject to all the restrictions upon, the chairperson. The vice-chairperson shall also perform such other duties and have such other powers as from time to time may be assigned to the office or to the vice-chairperson by these bylaws or by the board or by the chairperson. The vice-chairperson shall assume the role of chairperson of the screening committee. Election of the vice-chairperson shall be at the annual meeting or such other time as may be necessary. The vice-chairperson shall hold office until the next annual meeting.

B. Records. The board secretary shall keep an accurate record of all proceedings of the board, and shall be the custodian of all books, documents, and papers filed with the board and the minute books of the board. The secretary shall cause copies to be made of all minutes and other records and documents of the board and shall certify that such copies are true copies, and all persons dealing with the board may rely upon such certification. The records of the board shall be kept at the principal office of the board or at such other place that the board may determine. The records of the board shall be available for public inspection at reasonable times in the manner provided by law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2242 (October 2000).

§113. Standing Committees

A. The board, by resolution adopted by a majority of the board then in office, may establish one or more standing committees, each which shall consist of three or more board members. Each committee shall have and exercise the authority of the board as contained within the resolution establishing such committee and shall perform such functions as shall be provided for in such resolution.

B. Appointment of Members. The officers and members of all standing and ad hoc committees shall be appointed by the chairperson.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2243 (October 2000).

§115. Speaking before the Board

A. Time Limit Set on Speaking before the Board

1. Petitions to the board by an applicant and/or representatives of same shall, as a group, be limited to at total of 10 minutes to put forward their plea.

2. Opponents to a given application shall, as a group, have a total of 10 minutes to put forward their opposition.

3. Any and all interested parties shall, as a group, have a total of 10 minutes to put forward their views.

4. If any group has more than one speaker, the group may divide their 10 minutes by the number of speakers in that group, however in no case will any group be allowed to speak for more than 10 minutes total.

5. Questions addressed to an applicant or others by a board member are not subject to the above time limits.

B. Any person wishing to appeal the action of the Board of Commerce and Industry or wishing to petition the board or any of its committees or sub-committees must submit their appeal or petition along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the Board of Commerce and Industry, the committee or sub-committee, during which the appeal or petition will be presented.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Business Division, LR 26:2243 (October 2000).

Subchapter B. Fees (Reserved)**Chapter 3. Gaming Ineligibility****§301. Gaming Ineligible**

A.1. Any entity that has received or applied for a license to conduct gaming or is owned, controlled or managed by a company that has received or applied for a license to

conduct gaming shall be ineligible to receive a contract for any tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry.

2. If an entity that has received a contract for any tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry, subsequently, during the term of such contract, applies for or receives a license to conduct gaming or becomes owned, controlled or managed by a company that has applied for or received a license to conduct gaming, the board shall, after notice, terminate the contract, and the entity shall repay any tax exemption, credit, rebate or other benefit received pursuant to the contract. The entity shall notify the board of its application for or receipt of a gaming license or change in ownership, control or management.

3. An entity that is owned, controlled or managed by a company that has received or applied for a license to conduct gaming may apply for a contract for a tax exemption, credit, rebate or other benefit granted by the Board of Commerce and Industry if the business operated by that entity is not related to and does not provide support to the gaming activity. The burden shall be on the applicant to prove that the business is not related to and does not provide support to the gaming activity. If the board determines that the entity has provided sufficient proof that the entity is not related to and does not provide support to the gaming activity the board may, in its discretion, grant a contract for any tax exemption, credit, rebate or other benefit.

B. Definitions

Bingo—the game of chance commonly known as *bingo* or keno played for prizes with cards bearing numbers or other designations, five or more in one line, the holder covering numbers, as objects, similarly numbered, are drawn from a receptacle, and the game being won by the person who first covers a previously designated arrangement of numbers on such a card.

Economic Interest—any interest in a contract, license or licensee whereby a person receives or is entitled to receive, by agreement or otherwise, a profit, gain, thing of value, loss, credit, security interest, ownership interest, or other benefit.

Game—any banking or percentage game which is played with cards, dice, or any electronic, electrical, or mechanical device or machine for money, property, or any thing of value. Game does not include a lottery, bingo, pull tabs, raffles, electronic video bingo, cable television bingo, dog race wagering, or any wagering on any type of sports event, including but not limited to football, basketball, baseball, hockey, boxing, tennis, wrestling, jai alai, or other sports contest or event or racehorse wagering.

Gaming Device—any equipment or mechanical, electromechanical, or electronic contrivance, component, or machine, including but not limited to slot machines or video draw poker devices, used directly or indirectly in connection with gaming or any game which affects the result of a wager

by determining wins or losses. The term includes a system for processing information which can alter the normal criteria of random selection, which affects the operation of any game, or which determines the outcome of a game.

Gaming Operations or Gaming Activities—

a. the use, operation, offering or conducting of any game or gaming device;

b. the conducting, or directly assisting in the conducting, as a business, of any game, contest, lottery, or contrivance on board a commercial cruise ship used for the international carriage of passengers whereby a person risks the loss of anything of value in order to realize a profit;

c. the intentional conducting or assisting in the conducting of gaming activities upon a riverboat as defined and authorized in R.S. 4:501-4:562, whereby a person risks the loss of anything of value in order to realize a profit;

d. the intentional conducting or assisting in the conducting of gaming operations at the official gaming establishment as defined and authorized in Chapter 10 of Title 4 of the Louisiana Revised Statutes of 1950.

Pull Tabs—single or banded tickets or cards each with its face covered to conceal one or more numbers or symbols, where one or more card or ticket in each set has been designated in advance as a winner.

Racehorse Wagering—wagers placed on horse racing conducted under the pari-mutuel form of wagering at licensed racing facilities that is accepted by a licensed racehorse wagering operator.

Raffle—the game of chance commonly known as raffle or raffles played by drawing for prizes or the allotment of prizes by chance, by the selling of shares, tickets, or rights to participate in such game or games, and by conducting the game or games accordingly.

Slot Machine—any mechanical, electrical, or other device, contrivance, or machine which, upon insertion of a coin, token, or similar object therein or upon payment of any consideration whatsoever, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the machine to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.

Video Draw Poker—device any unit, mechanism, or device authorized pursuant to the provisions of this Part, that, upon insertion of cash, is available to play or simulate the play of the game of draw poker or other card games, utilizing a cathode ray tube or video display screen and microprocessors in which the player may win games or credits that can be redeemed for merchandise or cash. The term does not include a device that directly dispenses coins, cash, tokens, or anything else of value, except the ticket voucher required in accordance with the provisions of this Part. The term does not include any device authorized to be used in the conducting of charitable gaming.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:926, 51:1786(6), 47:4319.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 21:258 (March 1995), amended by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives, LR 26:630 (April 2000).

Chapter 5. Industrial Ad Valorem Tax Exemption Program

§501. Use of Louisiana Contractors, Labor and Supplies

A. The Board of Commerce and Industry requires manufacturers and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies and equipment manufactured in Louisiana or, in the absence of Louisiana manufacturers, sold by Louisiana residents, and to the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the manufacturers receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

AUTHORITY NOTE: Adopted in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§503. Time Limits for Filing of Advance Notifications and Applications (Rule 2)

A. An advance notification of intent to apply for tax exemption shall be filed with the Office of Commerce and Industry on the prescribed form prior to the beginning of construction or installation of facilities. The board may, in its discretion, extend the time for filing, for good cause shown by the applicant. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins. An advance notification fee of \$100 shall be submitted with the form. This Subsection applies to all applications other than those covered in §505 *Miscellaneous Capital Additions (Rule 3)*.

B. Application for tax exemption and the Project Completion Report must be filed with the Office of Commerce and Industry on the form prescribed not later than three months after the beginning of operations. If the construction is not complete at the time of filing the application, and operation of the project has begun, the 3101 applicant must file the Project Completion Report within 30 days after completion of construction (also, see §525). The deadline for filing the application may be extended pursuant to §523.

C. An application fee shall be submitted with the application based on the amount equal to 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the fee submitted is incorrect or the form is filed incomplete or with incorrect information. The document may be resubmitted with the correct fee. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted for eligible projects, shall not be refundable.

E. In order to include an application for the next scheduled meeting of the Board of Commerce and Industry, applications must be received a minimum of one month prior to the next scheduled screening committee meeting date. The authorized board representative, at his discretion, may accept certain applications beyond this date.

F. If applicant submits the application after the required due date established by Subsection B of this Section, the term of the initial contract of exemption may be reduced by one year for each year or portion thereof, that the application is filed late. The board may impose any other penalty for late submission that it deems appropriate.

G. Contractee's eligibility for exemption and the property exempted for the initial contract period will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered. The property exempted for the initial contract period may be increased or decreased based upon review of the application.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:864 (August 1994).

§505. Miscellaneous Capital Additions (Rule 3)

A. Tax exemption applications for miscellaneous capital additions totaling \$5,000,000 or less; or, accumulated capital additions totaling \$5,000,000 or less may be filed. Any dollar amount above the \$5,000,000 limit per application shall automatically be restricted from the total. This type application should be filed using the following guidelines.

1. Not later than March 31 of each year, with the exception of Orleans Parish (see Paragraph 4), applications for tax exemption shall be filed on the prescribed form with the Office of Commerce and Industry, listing the nature, the date and the amount of miscellaneous capital additions completed during the preceding calendar year, and deducting therefrom such replacements made, if any, at their original cost. Such amounts shall be clearly identifiable on the records of the manufacturer.

2. An application fee shall be submitted with the application based on the amount equal to 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project.

3. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the fee submitted is incorrect or the form is filed incomplete or with incorrect information. The document may be resubmitted with the correct fee. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted for eligible projects, shall not be refundable.

4. For Orleans Parish applications for tax exemption on miscellaneous capital additions should be filed not later than October 31 and should cover items completed since August 1 of the preceding year, and deducting therefrom such replacements made, if any, at their original cost. Such amounts shall be clearly identifiable on the records of the manufacturer.

5. The board may restrict the years of eligible exemption, on the initial contract, if applicant submits the application after the required due date established by §505.A.1 and A.4 which is relative to said location of new manufacturing establishment or addition. The term of the contract may be reduced by one year for each calendar month, or portion thereof, that the application is filed late. The board may impose any other penalty for late submission that it deems appropriate.

6. A miscellaneous capital addition is an accumulation, over a 12-month period of small capital outlay purchases totaling a maximum of \$5,000,000.

7. Contractee's eligibility for exemption and the property exempted for the initial contract period will be reviewed by the board based upon the facts and circumstances existing at the time the application is considered. The property exempted for the initial contract period may be increased or decreased based upon review of the application.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994).

§507. Manufacturing Establishment Clarified (Rule 4)

A. The terms *manufacturing establishment* and *addition* as used herein mean a new plant or establishment or an addition or additions to any existing plant or establishment which engage in the business of working raw materials into wares suitable for use or which give new shapes, qualities, or combinations to matter which already has gone through sonic artificial process.

B. The Board of Commerce and Industry shall consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §517, Rule 9) and additions for existing manufacturing establishments within the state of Louisiana. Exemptions are granted to the actual owners of buildings that house a manufacturing operation, and/or facilities that are operated specifically in the manufacturing of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and

2. owners who are not engaged in manufacturing at said manufacturing establishment, but who have provided either or both of the following for a predetermined manufacturing establishment:

a. buildings to house a manufacturing establishment; and/or

b. facilities that consist of manufacturing equipment operated specifically in the manufacturing process.

C. If a property owner includes clauses in the lease agreement or correspondence relating to the Industrial Ad Valorem Property Tax Exemption Program ("the program"), in which the lessors have joined and ratified all actions of the lessees, and the lease provisions make it evident that the property owner contemplated and bargained for an actual role in the property renovations and improvements, the lessee could make application for the program.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:865 (August 1994).

§509. Office Furniture and Fixtures (Rule 5)

A. Office furniture and fixtures are eligible for tax exemption only when they are an integral part of the manufacturing operation and permanently located at the manufacturing establishment.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§511. Portable Equipment (Rule 6)

A. Portable equipment is subject to exemption if it is not removed from the exempted property and if such equipment is necessary to the continued maintenance or operation of the manufacturing process. Such property, therefore, is not to be rented, leased or used outside facility boundaries.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§513. Relocations (Rule 7)

A. A manufacturing establishment moved from one location in the state to another place within the state shall be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted the original location. Exemption may be granted at the new location on those costs of necessary replacements which are in excess of the original cost at the prior facility.

B. Capital additions for remodeling an existing manufacturing facility may be exempted. If replacements are made, only the capital expenditures in excess of original cost shall be eligible for tax exemption. A deduction for the original cost of property to be replaced shall not be made if the project will contribute to additional employment in the state of at least 499 new jobs and the capital additions exceed \$50,000,000.

C. Exemption may be granted on the cost of rebuilding partially or completely damaged facility, but only on the amount in excess of the original cost.

D. Original costs, deducted from replacements made or rebuilding, shall be clearly identifiable on the records of the manufacturer.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994), amended by the Department of Economic Development, Office of Business Development, LR 29:2633 (December 2003).

§515. Used Equipment (Rule 8)

A. Used equipment is eligible for tax exemption provided no ad valorem property taxes have been paid in Louisiana on said property.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:886 (August 1994).

§517. Assessed Property (Rule 9)

A. The Board of Commerce and Industry shall not consider for tax exemption any manufacturing establishment, or addition thereto, once such establishment or addition has been in operation for a period of six months unless the assessor of the parish in which the establishment or addition is located certifies in writing that said establishment or addition is not on the taxable rolls. If the establishment or addition is on the taxable rolls the board shall consider granting tax exemption if the assessor and the Louisiana Tax Commission both agree in writing to remove the establishment or addition from the taxable rolls should the tax exemption be granted.

B. Under no circumstances shall the board consider for tax exemption any buildings, equipment and/or additions listed on an application submitted by a manufacturing establishment once ad valorem property taxes have been

paid on the buildings and/or equipment listed on said application. Items listed on said application, where ad valorem property taxes have been paid, shall be considered as ineligible items and shall be restricted from the amount applied for.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 11:97 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§519. Land (Rule 10)

A. The land on which a manufacturing establishment is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§521. Inventories (Rule 11)

A. Inventories of raw materials used in the course of manufacturing and inventories of finished products are not eligible for tax exemption. However, materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the manufacturing facility. Some examples of these are: ammonia in a freezing plant, solvent in an extraction plant and catalyst in a manufacturing process.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:866 (August 1994).

§523. Extension of Time (Rule 12)

A. The authorized board representative may, upon receipt of a written request, prior to the document due date, grant an extension of time for the submission of applications (§503, Rule 2 only), project completion reports, or affidavits of final cost for a period not to exceed six months.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§525. Effective Date of Contract (Rule 13)

A. The owner of a new manufacturing establishment or addition, shall carefully document the beginning date of effective operation, and also document the date that construction is essentially complete. The owner must file that information with the Office of Commerce and Industry on the prescribed Project Completion Report form not later than three months after the beginning of operations or 30 days after completion of construction, whichever occurs last. The authorized board representative shall indicate, with a

return copy of that report, the effective date of the tax exemption contract, which shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever was sooner.

B. The assessment date for Orleans Parish is August 1. The effective date of contracts for a new manufacturing establishment or addition located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§527. Affidavit of Final Cost (Rule 14)

A. Within six months after construction has been completed, and/or receipt of the fully executed contract whichever is later, the owner of a manufacturing establishment or addition shall file on the prescribed form an Affidavit of Final Cost showing complete cost of the exempted project. A fee of \$100 shall be filed with the Affidavit of Final Cost for an on-site inspection that shall be conducted by a representative of the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities exempted in the project shall be submitted in order that the exempted property may be clearly identifiable.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Commerce, Office of Commerce and Industry, LR 12:662 (October 1986), amended by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§529. Renewal of Tax Exemption Contract (Rule 15)

A. If a renewal of the exemption is desired, a renewal application must be filed on the prescribed forms with the Office of Commerce and Industry not more than six months prior to and not later than the expiration of the initial contract. A fee of \$50 shall be filed with the renewal application. The document shall not be considered officially received and accepted until the appropriate fee is submitted. Upon proper showing of full compliance with the initial contract of exemption, the contract may be approved by the Board of Commerce and Industry for an additional period up to but not exceeding five years.

B. Contractee's eligibility for a renewal contract and the property exempted for the renewal period will be reviewed by the board using the same criteria that was used for the initial contract and based upon the facts and circumstances existing at the time the renewal application is considered. The property exempted for the renewal period may be increased or decreased based upon review of the renewal application. The term of the renewal contract may be reduced by one year for each calendar month, or portion thereof, that the renewal application is filed late. The board may impose any other penalty for late renewal submission that it deems appropriate.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§531. Violation of Rules or Documents (Rule 16)

A. On the board's initiative, or whenever written complaint on an alleged violation of terms of tax exemption rules or documents is received, the assistant secretary for the Office of Commerce and Industry may cause to be made a full investigation on behalf of the board and he shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractees and complainants. Results of the investigation will be presented to the board.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the State Board of Commerce and Industry, December 9, 1946, amended and promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§533. Reporting Requirements for Changes in Operations (Rule 17)

A. The Office of Commerce and Industry is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract. The board may consider restrictions or cancellation of a contract for cessation of the manufacturing operation, or retirement of any portion of the exempted equipment. Failure to report any changes constitutes a breach of contract and, with approval by the board, shall result in restriction or cancellation of same.

B. The manufacturing establishment shall file annually with the assessor of the parish in which the manufacturing plant is located, a complete taxpayer's report on forms furnished by that assessor in order that the exempted property may be separately listed on the assessment rolls.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:867 (August 1994).

§535. Sale or Transfer of Exempted Manufacturing Establishment

A. In the event a contractee should sell or otherwise dispose of property covered by a contract of exemption, the purchaser of the said plant or property may, within three months of the date of such act of sale, apply to the board for a transfer of the contract. The board shall consider all such applications for transfer of contracts of exemption strictly on the merits of the application for such transfer. No such transfer shall in any way impair or amend any of the provisions of the contract so transferred other than to change the name of the contractee. Failure to request or apply for a transfer within the stipulated time period shall constitute a violation of the contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 20:868 (August 1994).

§537. Miscellaneous Capital Additions

A. Tax exemption applications on miscellaneous capital additions totaling less than \$3,000,000 may be filed in the following manner.

1. Capital Additions Totaling Less than \$3,000,000 in One Calendar Year

a. Not later than March 31 of each year, applications for tax exemption shall be filed on the prescribed form with the Office of Commerce and Industry, listing the nature, the date and the amount of miscellaneous capital additions completed during the preceding calendar year, and deduction therefrom such replacements made, if any, at their original cost. Such amounts shall be clearly identifiable on the records of the manufacturer. An application fee shall be submitted with the application based on the following range of taxes to be exempted.

Fee Amount	Range of Taxes to be Exempted
\$200	\$1 to \$15,000
\$300	\$15,001 to \$50,000
\$400	\$50,001 to \$150,000
\$500	over \$150,000

b. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

c. Since the assessment date for Orleans Parish is August 1, applications for tax exemption on miscellaneous capital additions in Orleans Parish should be filed not later than October 31 and should cover items completed since August 1 of the preceding year.

2. Capital additions reaching an accumulated total of \$3,000,000 during the calendar year.

a. Application for tax exemption on the prescribed forms must be filed with the Office of Commerce and Industry whenever miscellaneous capital additions on which exemption is to be requested reach an accumulated amount of \$3,000,000. An application fee shall be submitted with the application based on the following range of taxes to be exempted.

Fee Amount	Range of Taxes to be Exempted
\$200	\$1 to \$15,000
\$300	\$15,001 to \$50,000
\$400	\$50,001 to \$150,000
\$500	over \$150,000

b. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§539. Manufacturing Establishment Clarified

A. The Board of Commerce and Industry will consider for tax exemption buildings and facilities used in the operation of new manufacturing establishments located within the state of Louisiana (subject to the limitations stated in §517) and additions for existing manufacturing establishments within the state of Louisiana. Exemptions are granted to the actual owners of buildings which house a manufacturing operation, and/or facilities which are operated specifically in the manufacture of a product. The board recognizes two categories of ownership:

1. owners who engage in manufacturing at said facilities; and

2. owners who are not engaged in manufacturing at said plant, but who have provided either or both of the following for a predetermined manufacturing establishment:

a. buildings to house a manufacturing establishment; and/or

b. facilities which consist of manufacturing equipment operated specifically in the manufacturing process.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§541. Office Furniture and Fixtures

A. Office furniture and fixtures are eligible for tax exemption only when they are an integral part of the manufacturing operation and lodged at the manufacturing establishment.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§543. Portable Equipment

A. Portable equipment is subject to exemption if it is not removed from the exempted property and if such equipment is necessary to the continued maintenance or operation of the manufacturing process. Such property, therefore, is not to be rented, leased, or used for outside operations.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§545. Relocated Plants

A. Plants moved from one location in the state to another place within the state will be eligible for the unexpired consecutive years, if any, of the tax exemption contract granted the original location. Exemption may be granted at the new location on those costs of necessary replacements which are in excess of the original cost at the old plant.

B. Capital additions for remodeling existing or abandoned or idled manufacturing plants may be exempted. If replacements are made, only the capital expenditures in excess of original cost of parts replaced will be eligible for tax exemption.

C. Exemption may be granted on cost of rebuilding partially or completely destroyed plants, but only on the amount in excess of the original cost of parts destroyed.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§547. Secondhand Items

A. Secondhand items are considered eligible for tax exemption provided they are not on the active Louisiana assessment rolls and provided they have not been previously granted tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§549. Assessed Property

A. The Board of Commerce and Industry will not consider for tax exemption any manufacturing establishment, or addition thereto, once such establishment or addition has been in operation for a period of six months unless the assessor of the parish in which the establishment or addition is located certifies in writing that said establishment or addition is not on the tax rolls. If the establishment or addition is on the tax rolls the Board of Commerce and Industry will consider granting tax exemption if the assessor and the Louisiana Tax Commission both agree in writing to remove the establishment or addition from the tax rolls should the tax exemption be granted.

B. Under no circumstance will the Board of Commerce and Industry consider for tax exemption any manufacturing establishment or addition thereto once ad valorem taxes have been paid on said establishment or addition.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§551. Land

A. The land on which a plant is located is not eligible for tax exemption.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§553. Inventories

A. Inventories of raw materials used in the course of manufacture and inventories of finished products are not eligible for tax exemption. However, materials which are an essential and integral part of a manufacturing process, but do not form part of the finished product, may be exempted along with the plant. Some examples of these are: ammonia in a freezing plant, solvent in an extraction plant and catalyst in a manufacturing process.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§555. Extension of Time

A. The assistant secretary of the Office of Commerce and Industry is authorized to grant an extension of up to six months in the time for completion of construction contained in a tax exemption contract. Further extensions must be approved by the State Board of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§557. Effective Date of Contract

A. The owner of a manufacturing establishment shall carefully document the beginning date of effective operation of the new plant or added facility, and also document the date that construction is essentially complete. The contractee must file that information with the Office of Commerce and Industry on the prescribed Project Completion Report within 30 days following the last day of the month after effective operation has begun or construction is essentially complete, whichever occurs first. The assistant secretary of the Office of Commerce and Industry will indicate with a return of a copy of that report the effective date of the tax exemption contracts, which shall be December 31 of the year in which effective operation began or construction was essentially completed, whichever was sooner.

B. As the assessment date for Orleans Parish is August 1, the effective date of contracts for plants located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§559. Affidavit of Final Cost

A. Within six months after construction has been completed, the owner of a manufacturing establishment shall file on the prescribed form an Affidavit of Final Cost showing complete cost of the exempted project. A fee of \$100 shall be filed with the Affidavit of Final Cost for an on-site inspection that will be conducted by a representative of the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities exempted in the project will be submitted in order that the exempted property may be clearly identifiable.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§561. Renewal of Tax Exemption Contract

A. The initial period of tax exemption is limited to five calendar years. If renewal for an additional five calendar year period is desired an application must be filed on the prescribed forms with the Office of Commerce and Industry at least 90 days before the expiration of the initial contract. The Office of Commerce and Industry shall notify the owner of this requirement in sufficient time for him to apply for the renewed exemption. Upon proper showing of full compliance with the contract of exemption the contract shall be approved by the Board of Commerce and Industry for an additional period not to exceed five calendar years.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§563. Violation of Rules or Documents

A. On the board's initiative or whenever written complaint on violation of terms of tax exemption rules or documents is received, the assistant secretary of the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and he shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractees. If the investigation substantiates a violation he may present the subject contract to the board for formal cancellation.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974.

§565. Changes in Tax Exemption Contract

A. The Office of Commerce and Industry is to be notified immediately of any change which affects the tax exemption contract. This includes any changes in the ownership or operational name of a firm holding a tax exemption contract, the retirement of any portion of exempt equipment or the abandonment of operations. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with Article VII, Part 2, Section 21(F) of the Louisiana Constitution of 1974.

HISTORICAL NOTE: Adopted by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, September 1974, amended by the Department of Commerce, Office of Commerce and Industry, 12:663 (October 1986).

Chapter 7. Enterprise Zone Program**§701. Scope**

A. Intent of Program. The intent of the program is to stimulate employment for residents in depressed areas of the state which are designated as enterprise zones by providing tax incentives to a business hiring from these areas.

B. Description of Program. The Louisiana Enterprise Zone Program is a jobs program which gives tax incentives to a business hiring from enterprise zones in Louisiana or from one of the other targeted groups. Enterprise Zone Program incentives are in addition to other state sponsored incentives such as the Industrial Tax Exemption Program and the Restoration Tax Abatement Program. Enterprise Zone and Quality Jobs Programs are mutually exclusive.

C. The following incentives are available.

1. A one-time tax credit of \$2,500 for each net new job filled with a Louisiana resident added to the applicant's payroll. The tax credit may be used to satisfy state income tax and/or franchise tax liabilities. If the entire tax credit cannot be used in the year created, the remainder may be applied against the state income tax and/or franchise tax liabilities for the succeeding 10 taxable years or until the entire credit is used, whichever occurs first.

2. In lieu of §701.C.1 tax credit, aviation and aerospace industries [as defined in the 3720s and 3760s Standard Industrial Classification (SIC) manual] and auto parts manufacturers [as defined in 3363s North American Industrial Classification System (NAICS) manual] are eligible for a one-time tax credit of \$5,000 for each net new job filled with a Louisiana resident added to the applicant's payroll. The tax credit may be used to satisfy state income tax and/or franchise tax liabilities. If the entire tax credit cannot be used in the year created, the remainder may be applied against the state income tax and/or franchise tax liabilities for the succeeding 10 years, or until the entire credit is used, whichever occurs first. The \$5,000 tax credit for auto parts manufacturers will sunset June 30, 2006.

3. An additional \$2,500 tax credit is available to an applicant hiring Temporary Assistance for Needy Families (TANF) recipients. This tax credit is in addition to the incentive for new jobs created in §701.C.1 and §701.C.2. The TANF recipient must receive compensation which will disqualify them from continued participation in TANIF and must be employed for two years to generate the additional tax credit. The tax credit may be used to satisfy state income tax and/or franchise tax liabilities. If the entire tax credit cannot be used in the year created the remainder may be applied against the state income tax and/or franchise tax liabilities for the succeeding 10 years or until the entire credit is used, whichever occurs first. An employer shall not obtain the jobs tax credit for more than 10 TANIF employees in the first year of participation in the program.

4. Rebates can consist of sales/use taxes imposed by the state and imposed by local governmental subdivisions, upon approval of the governing authority of the appropriate municipality, parish, or district, where applicable, on all eligible purchases during the specified project/construction period per §725.H. The project/construction period is limited to a 24 month period. Upon a written request, a project/construction period extension, not to exceed six months, may be granted by the Office of Business Development, Business Incentives Division (BI). Rebates paid by local governmental subdivisions can only consist of those sales/use taxes that are not dedicated to the repayment of bond indebtedness or dedicated to schools. Final requests for the payment of any rebate must be filed with the Louisiana Department of Revenue (LDOR) and/or its local governmental subdivision no later than six months after the project's completion is documented or six months after the date of the governor's signature on the contract, whichever is later. Documentation of the completion of a project shall be either by using the application certification section or the filing of a separate Project Completion Report (PCR), as applicable, whichever date is later. An extension of up to six months on filing the rebate request with the LDOR may be granted upon written request to the BI. This request must be received by BI prior to the standard rebate request time period has expired.

D. Qualifications

1. The applicant's current level of employment must be increased by 10 percent (minimum of one net new job) within the first 12 months or a minimum of five net new jobs must be added to the current payroll within the first two years of the contract period. See §703.*Minimum Net New Jobs Required*. Thirty-five percent net new employees must meet §§709, 711, 713, or 715 as applicable.

2. Any business, except residential developments, (including but is not limited to the construction, selling, or leasing of single-family or multi-family dwellings, apartment buildings, condominiums, town houses, etc), churches, and businesses with gaming (See LAC 13:I.Chapter 3 Gaming Ineligibility) may apply for enterprise zone benefits.

3. An applicant in an urban parish must certify that a minimum of 35 percent of its net new employees meet the requirements of §709.

4. An applicant located in a rural parish and in an enterprise zone must certify that a minimum of 35 percent of its net new employees meet the requirements of §711.

5. An applicant located in a rural parish and not in an enterprise zone must certify that a minimum of 35 percent of its net new employees meet the requirements of §713.

6. An applicant located in an economic development zone must certify that a minimum of 35 percent of its net new employees meet the requirements of §715.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:252 (March 1991), amended by Department of Economic Development, Office of Commerce and Industry, LR 22:446 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2298 (November 2003).

§703. Definitions

Affiliate—

1. any business entity that is:
 - a. controlled by the applicant business;
 - b. a controlling owner of the applicant business; or
 - c. controlled by an entity described in Subparagraph a or b;
2. for purposes of this definition, *Control* is defined as owning either directly, or indirectly through control of or by another business entity:
 - a. a majority of the voting stock or other voting interest of such business entity or the applicant business; or
 - b. stock or other interest whose value is a majority of the total value of such business entity or the applicant business;
3. a business entity may be treated as a non-affiliate if the applicant business proves that neither the applicant business nor any of its controlling owners exercise authority over the management, business policies and operations of the business entity.

Beginning of Project/Construction—the first day on which foundations are started or where foundations are unnecessary, the first day on which installation of the facility begins or the first day that materials or equipment purchased for that project are received. Where there is no construction, the first day on which a new hire is made in connection with the project shall mean *Beginning of Project/Construction* for the purposes of this Chapter.

Contract Effective Date—either the day that the advance notification was received by BI or the beginning date of the project/construction shown on the application. The contract effective date cannot be earlier than the date the advance notification was received by BI unless a waiver of timely filing has been approved by the Board of Commerce and Industry (board).

Date of Hire—the first day of work for which the applicant directly pays an employee and is reported on the applicant's Louisiana Department of Labor (LDOL) Quarterly Report of Wages Paid.

Economic Development Zone (EDZ)—a geographic area of contiguous real properties defined by a visible boundary, designated as such by the state or the local governmental subdivision in which it is located and approved by the board. The location of an EDZ once defined is permanent, cannot be moved, expanded, or relocated, and is owned or operated by the state or a political subdivision of the state or operated by an entity created by the state or a political subdivision of the state. EDZs must have been created by state statute and are defined to include the following:

1. industrial park;
2. business park;
3. airport or air park;
4. research park;
5. research and development park;
6. downtown development district—with taxing and bonding authority;
7. former federal facility—cannot be a single building or small grouping of prior federally owned and occupied buildings. The immediate previous occupant of this facility must have been a federal governmental entity; and
8. port—only the contiguous real property actually owned by that port.

Enterprise Zone—an area of high unemployment, low income and/or an area where a large number of residents are receiving some form of public assistance. For purposes of R.S.51:1787.B.4 and D.4 the term *some form of public assistance* shall include any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependant upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their employment. Receiving unemployment is not public assistance.

Full Time Employee—an employee reported on the applicant's Louisiana Department of Labor (LDOL) Quarterly Report of Wages Paid and who is scheduled to work 35 hours per week on a permanent basis and receive benefits.

Lacking Basic Skills—an employee that exhibits below a ninth grade level proficiency in reading or writing or math.

Louisiana Resident—shall be someone who has lived in Louisiana at least 30 consecutive days prior to being hired by the applicant.

Minimum Net New Jobs Required—an applicant must create the lesser of expanding their current workforce by a minimum of 10 percent of their present statewide workforce, minimum of 1, within the first 12 months of the contract or expand their workforce by a minimum of five net new employees within the first 24 months of the contract. The applicant's statewide workforce and the statewide workforce of all of its Louisiana affiliates will be considered when calculating the 10 percent.

Net New Job—in addition to all the other employees reported on the applicant's LDOL Quarterly Report of Wages Paid based at the site of the enterprise zone project.

Part Time Employee—an employee reported on the applicant's LDOL Quarterly Report of Wages Paid and works a minimum of 20 hours each week for six consecutive months.

Project/Construction Ending Date—the date all construction and purchasing is completed for the project.

Project/Construction Period—the time encompassed by the Contract Effective Date and the Project/Construction Ending Date.

Rural Parish—a parish having a current U.S. Census population of 75,000 or less.

Some Form of Public Assistance—any program of assistance financed in whole or in part by a federal, state, or any local government agency, eligibility for which is dependant upon the employment status or income level of the individual. Any such assistance must have been received by the individual within a six-month period prior to their employment.

Unemployable by Traditional Standards—an employee that qualifies as physically challenged.

Urban Parish—a parish having a current U.S. Census population greater than 75,000.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2299 (November 2003).

§705. Endorsement Resolution

A. An applicant seeking a local sales/use tax rebate must obtain an endorsement resolution(s) from the local governmental subdivision(s) where those taxes are paid. The endorsement resolution must clearly state if the local governmental subdivision intends to rebate the allowable sales/use taxes for the project. This endorsement resolution must be passed by the local governmental subdivision(s) before the board approves the EZ application. Each project seeking a local sales/use tax rebate must have an endorsement resolution specific to the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:253 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:447 (June 1996), amended by the Department of Economic Development, Office of Commerce and Industry, Business Incentives Division, LR 23:295 (March 1997), amended by the Department of Economic Development, Office of Business Development, LR 29:2300 (November 2003).

§707. Documentation of Location

A. A current U.S. Census or the appropriate EDZ map with the project site location clearly marked shall be filed with the BI before the board approves the EZ application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:253 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:447 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2300 (November 2003).

§709. Targeted Employees for an Applicant in an Urban Parish

A. Applicant located in an urban parish and receiving the benefits of this Chapter must certify that all net new employees creating tax credits are Louisiana residents and at least 35 percent meets one of the following requirements:

1. are residents of an enterprise zone in the same parish at the project's location of the applicant's;
2. are residents of an enterprise zone in a contiguous parish if the applicant has 500 or more employees at the project's location;
3. are/were receiving some form of public assistance, as defined in §703.*Some Form of Public Assistance*, within a six-month period prior to their employment by the applicant;
4. are lacking basic skills; or
5. are unemployable by traditional standards.

AUTHORITY NOTE: Promulgated In accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce, Finance Division, LR 17:253 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:447 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2300 (November 2003).

§711. Targeted Employees for an Applicant in a Rural Parish and in an Enterprise Zone

A. Applicant located in an enterprise zone in a rural parish and receiving the benefits of this Chapter must certify that all net new employees creating tax credits are Louisiana residents and at least 35 percent meets one of the following requirements:

1. are residents of the same parish as the project's location of the applicant's;
2. are residents of an enterprise zone in a contiguous parish if the applicant business has 500 or more employees at the project's location;
3. are/were receiving some form of public assistance within the six month period prior to their employment by the applicant. (See §703.*Some Form of Public Assistance*);
4. are lacking basic skills; or
5. are unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 8:230 (May 1982), amended LR 9:544 (August 1983), amended by the Department of Commerce, Office of Commerce and Industry, Division of Financial Programs Administration, LR 11:95 (February 1985), amended by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:254 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:448 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003).

§713. Targeted Employees for an Applicant in a Rural Parish and Not in an Enterprise Zone

A. Applicant located in a rural parish and not located in an enterprise zone and receiving the benefits of this Chapter must certify that all net new employees creating tax credits are Louisiana residents and at least 35 percent meets one of the following requirements:

1. are residents of an enterprise zone in the same parish as the project's location of the applicant;
2. are residents of an enterprise zone in a contiguous parish if the applicant has 500 or more employees at the project's location;
3. are/were receiving some form of public assistance within a six month period prior to their employment by the applicant. (See §703.*Some Form of Public Assistance*);
4. are lacking basic skills; or
5. are unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003).

§715. Targeted Employees for an Applicant in an Economic Development Zone

A. Applicant business located in an EDZ and receiving the benefits of this Chapter must certify that all net new employees creating tax credits are Louisiana residents and at least 35 percent meets one of the following requirements:

1. are residents of the same parish as the project's location of the applicant;
2. are residents of an enterprise zone in a contiguous parish if the applicant has 500 or more employees at the project's location;
3. are/were receiving some form of public assistance within a six month period prior to their employment by the applicant (see §703.*Some Form of Public Assistance*);
4. are lacking basic skills; or
5. are unemployable by traditional standards.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003).

§717. Annual Employee Certification

A. An annual Employee Certification Report (ECR) must be filed with the BI by March 1 on all active contracts validating compliance with §§709, 711, 713, and 715. Failure to file may result in contract cancellation.

B. The "beginning number" from which the net new jobs will be determined shall meet one of the following:

1. the number of employees that an applicant has on the day before the contract effective date; or
2. the last annual average number of employees that was certified under a valid enterprise zone contract the day prior to the new contract effective date on contiguous contracts.

C. An employee count will be taken from the applicant's entire contiguous site for the purposes of calculating the jobs tax credit generated. If the applicant has more than one site within the metropolitan area where the project is located, BI may consider the total employee count using all locations in calculating the jobs tax credits generated.

D. Monthly totals of permanent full time employees will be averaged over a minimum of six months to determine the number of jobs tax credit generated. Only employees reported on the LDOL Quarterly Report of Wages Paid will be used to calculate this average monthly total. In no case shall the new employees exceed the net increase in total employment.

E. Part time employees may be counted after completing a minimum of 20 hours every week for that continuous six-month period. Only employees reported on the LDOL Quarterly Report of Wages Paid will be used to calculate this average monthly total. In no case shall the new employees exceed the net increase in total employment.

F. If the ECR substantiates that the company has not met the hiring requirements in this Chapter, the board shall cancel the contract and no jobs tax credit will be granted. The Department of Economic Development (LDED) will notify LDOR within 30 days after cancellation of a contract. Upon notification by LDED of the failure to meet the minimum jobs requirement, LDOR will immediately assess tax liability to the applicant equal to all state sales/use tax rebates paid pursuant to this Chapter plus any penalty and interests due.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2301 (November 2003).

§719. Arbitrary Termination of Employees

A. The board shall not accept an application from an applicant which performs essentially the same job at the same or new location but for a different ownership in order to qualify for the benefits of this Chapter. New jobs tax

credits shall not be generated by those persons whether or not the name or owner of the business changes over a short period of time (less than two weeks), i.e., a business closes on Friday under one ownership and opens on Monday under a different ownership. These are not net new jobs and shall not generate jobs tax credits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2302 (November 2003).

§721. Items Eligible for Sales/Use Tax Rebate

A. Materials that are permanently installed at the enterprise zone project site during the project/construction period are eligible for sales/use tax rebates.

B. Materials that originate from a contractor/subcontractor's inventory and are permanently installed at the enterprise zone project site during the project/construction period are eligible for sales/use tax rebates. In order for rebates to be issued on property withdrawn from inventory, the contractor/subcontractor must maintain sufficient records and provide sufficient information to enable the LDOR to verify that Louisiana sales or use taxes were paid on the property for which rebate is claimed.

C. Machinery and/or equipment purchased for the enterprise zone project site during the project/construction period are eligible for sales/use tax rebates provided that the machinery and equipment are used exclusively at the project site, are owned by an entity named in the enterprise zone contract with the state, and are intended to remain at the project site for the expected useful life of the machinery and equipment.

D. Machinery and or equipment transferred into Louisiana for the enterprise zone project site during the project/construction period are eligible for sales/use tax rebates provided that the machinery and equipment are used exclusively at the project site, are owned by an entity named in the enterprise zone contract with the state, and are intended to remain at the project site for the expected useful life of the machinery and equipment.

E. Software purchased, capitalized, and used by the applicant primarily at the enterprise zone project site during the project/construction period are eligible for sales/use tax rebates.

F. Consumable items are not eligible for sales/use tax rebate. A partial listing of ineligible items are: per diem, labor, service contracts, storage, freight, radios, laptop computers, utilities, permits and fees, office supplies, construction consumables, blades, drill bits, PVC sheeting, tape, gloves, dusk masks, and all leases and rentals.

G. Lease-purchases may be eligible for a sales/use tax rebate upon LDOR's approval. The property acquired through lease-purchase must be used exclusively at the project site, must be owned by an entity named in the enterprise zone contract with the state, and must be intended

to remain at the project site for the expected useful life of the machinery and equipment. A copy of the lease-purchase agreement must be submitted with the Claim for Rebate Request to LDOR, Office Audit Division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Commerce, LR 9:230 (May 1982), amended LR 9:544 (August 1983), LR 11:96 (February 1985), amended by the Department of Economic Development, Office of Business Development, LR 17:255, (March 1991), LR 22:449 (June 1996), LR 29:2302 (November 2003).

§723. Filing of Advance Notification

A. An Advance Notification form and fee shall be filed prior to the beginning of project/construction with BI. All incentives for the same project must be indicated on one advance notification and be identified by one project number. It is not acceptable to apply for Enterprise Zone Program and use the same project in a Miscellaneous Capital Addition application for the Industrial Tax Exemption Program. Internet filing of the advance notification may be made at <http://www.laemall.com>.

B. An advance notification lacking the proper application will expire one year after the project/construction ending date shown on the advance notification unless a written request for a date revision request is received by BI prior to the expiration date.

C.1. An advance notification received by BI after the beginning of the project/construction will obligate the applicant to file written reason(s) for the late filing. The board will accept reasons that fall within the following two categories in determining if it will consider waiving the late filing:

- a. events beyond the control of the applicant caused the late filing; or
- b. there was some documented fault or error on the part of the BI that caused the applicant's late filing.

2. Lack of knowledge of the existence of the Enterprise Zone Program or its benefits will not be accepted as a valid reason for waiving the timely filing requirement.

D. An advance notification which receives a waiver of late filing will allow the applicant to proceed as if the advance notification was filed timely.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development LR 29:2302 (November 2003).

§725. Filing of Applications

A. Applications must be filed with the Office of Business Development, Business Incentives Division, P.O. Box 94185, Baton Rouge, LA, 70804-9185, on the form prescribed, within three months after project/construction ending date. Internet filing of the application may be made at <http://www.laemall.com>.

B.1. An application fee shall be submitted with the each application based on the following formula:

Application Fee = Total Estimated Tax Relief x 0.2% (0.002)
 Total Estimated Tax Relief =
 Jobs Tax Credit* + State sales/use tax rebate
 Application Fee = Total Estimated Tax Relief x 0.2% (0.002)
 (Minimum fee is \$200 and the maximum fee is \$5,000 application per program.)

2. An additional application fee will be due if a project's employment or investment scope is increased, resulting in a minimum fee of \$100 more than what has already been submitted, unless the maximum has been paid.

3. Jobs Tax Credit—the total amount calculated by multiplying all the new jobs estimated to be created within the five-year contract period by \$2,500 (\$5,000 for aerospace or auto parts manufacturers).

4. All fees shall be made payable to: Louisiana Department of Economic Development.

D. The applicant shall file an original and a copy of the Inspection/Audit Affidavit Form showing a complete list of building(s) and equipment and the cost of each item on the project with the appropriate fee for the inspection which will be conducted by the BI. This affidavit must be filed within six months of the project/construction ending date or when the signed original contracts are returned to the BI, whichever is later.

E. The BI reserves the right to return the advance notification, application, or inspection/audit affidavit to the applicant if the estimated tax relief or the fee submitted is incorrect. The application or inspection/audit affidavit may be resubmitted within 30 days with the correct fee without penalty.

F. The advance notification, application, and the inspection/audit affidavit will not be considered officially received or accepted without the appropriate fee being received by BI. Processing fees for the advance notification, application, or inspection/audit affidavit, which have been received and accepted, will not be refunded.

G. Applications must be submitted to the BI at least 45 days prior to the board meeting where it is intended to be presented for approval.

H. The applicant proposing a project with a construction period greater than two years is required to separate the project into phases with no phase having over a two-year construction period. Each construction phase shall require a separate advance notification, application and fee to be filed with the BI. The applicant must comply with §701.D for each application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003).

§727. Recommendations of the Secretaries of Economic Development and Revenue

A. BI shall forward the applications with recommendations to the secretary of Louisiana Department of Revenue and the secretary of Louisiana Department of Economic Development for their review. The secretaries of LDOR and LDED may submit a letter of no objection in lieu of a letter of recommendation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003).

§729. Application Shall Be Presented to the Board of Commerce and Industry

A. BI shall present an agenda of applications to the board and with recommendations based upon its findings.

B. Applicant or their representatives will be notified of the board meeting date at which their application will be considered. The applicant business should have someone present who is able to answer any questions the board may have regarding the information contained in the application. In the event there is no representative present, the application may be deferred or denied.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003).

§731. Board of Commerce and Industry Enters into Contract

A. Upon approval of the application, the board shall enter into contract with the applicant for the benefits allowed by this Chapter. The applicant must execute their portion of the contract and return it within 30 days to BI. The state will complete the execution. A fully executed original contract will be returned to the applicant. An original and a copy will be sent to the LDOR and, if applicable, a copy sent to the local governmental subdivision.

B. BI must be notified of any change that will effect the contract. This includes, but is not limited to, changes in the ownership or operational name of the applicant business holding a contract, or the suspension, closing, or abandonment of operations. Failure to report any changes within six months may constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003).

§733. Rebates of Sales/Use Taxes

A. The contract will not authorize the applicant to make tax exempt purchases from vendors. The applicant will be contacted by the LDOR on the proper procedures to obtain the state sales/use tax rebate. Rebates will be obtained by the filing of a rebate request with the LDOR, Office Audit Division, which must include the following:

1. a list of eligible purchases (see §721) including a brief description of each item, the vendor's name, date of the delivery, sales price and the amount of state sales/use tax paid. The listed items must have been purchased by the applicant of the project, a builder, a contractor, or other party that contracted with the owner to provide materials, equipment, machinery, or software that is used by the applicant primarily at the project site or is listed in Schedule 3 of the enterprise zone contract;

2. a certification that the listed materials are reasonably expected to qualify for a rebate under provisions of this Chapter; and

3. a certification that state sales/use taxes have been paid on the listed items.

B. The request may be filed on the official LDOR "Claim for Rebate" form or on other forms prepared by the applicant. After LDOR has validated the information on the Claim for Rebate, a rebate check will be issued for the amount of substantiated state sales/use taxes paid.

C. The applicant should contact the local governmental subdivision issuing the endorsement resolution to determine the procedure for local sales/use tax rebate.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2303 (November 2003).

§735. Applicant with a Contract Must File State Income and Franchise Tax Returns

A. Applicant that have satisfied their Louisiana income tax and/or franchise tax liability by applying jobs tax credits earned under this Chapter shall file the same required forms and tax returns with the LDOR that are required if no jobs tax credit were taken. Each annual return where jobs tax credit are taken will have a copy the letter from BI certifying the tax credits and the unused jobs tax credits from previous years provided. If total jobs tax credits are less than the total taxes, remittance in the amount of the difference must be enclosed with the tax return. Limited Liability Companies, Sub Chapter S Corporations, etc., must have the name(s) of owners and their social security numbers listed on the contract in order for job tax credits to flow through to the owner(s).

B. Partnerships and sole proprietorships shall file the same returns that are required if the jobs tax credit had not been granted.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003).

§737. Violations of Rules, Statutes, or Documents

A. On the initiative of the board or whenever a written complaint of violation of the terms of the rules, the contract documents, or the statutes, is received the board or its representative shall determine if a full investigation should

be made. The board shall have full authority for such investigation, including but not exclusively, the authority to call for reports, pertinent records, or other information from the applicant. If the investigation appears to substantiate a violation the board or its representative will present the subject contract for formal action. If an applicant is found to be in violation of these rules or the contract, the applicant shall remit back to the state all jobs tax credit taken on income tax and/or franchise returns, all sales and use tax rebates, and any other taxes that would have been imposed but for the issuance of this contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003).

§739. Economic Development Zone Annual Reporting

A. Each EDZ will submit an annual report which will compare activity in the last completed year to the previous year's activity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003).

§741. Multi-Tenant Facility

A. For a multi-tenant facility to be eligible for the benefits of this Chapter, the applicant must meet one of the following:

1. occupy a minimum of 33 percent of the total floor area of the building;
2. tenants are businesses new to the state;
3. tenants are Louisiana businesses increasing their number of locations within the state by placing a new location within this facility;
4. tenants are relocating within Louisiana and will generate the minimum of new job credits over and above the total jobs at their previous location per §701.D.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003).

§743. Relocation of Enterprise Zones

A. A local governmental subdivision requesting the relocation of an enterprise zone must provide valid reason(s) for requesting the move and must have the approval of the board. All relocation of enterprise zone requests must be accompanied by a single map showing the location of the old and the new enterprise zones.

B. The residents of originally designated enterprise zone may qualify as part of the 35 percent residency requirement.

C. The effective date of a relocation approved by the board shall be the date of passage affixed to the resolution by the local governing authority requesting the relocation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003).

§745. Appeals and Petition Procedure

A. Applicants who wish to appeal an action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Business Development, Business Incentives Division no later than 90 days after the board action to be appealed. The appeal shall not be considered by the board less than one month after it is submitted.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the board, must be submitted to the Office of Business Development, Business Incentives Division at least one month prior to the meeting of the board or any of its committees in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, LR 29:2304 (November 2003).

§749. Prohibit Local Fees and Prohibit Local Conflicting Employment Practices

A. No local governmental subdivision shall charge any fees or require any employment practices which conflict with state law as a precondition to authorize tax benefits under this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:1786(5).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 17:257 (March 1991), amended by the Department of Economic Development, Office of Commerce and Industry, LR 22:451 (June 1996), amended by the Department of Economic Development, Office of Business Development, LR 29:2305 (November 2003).

Chapter 9. Restoration Tax Abatement Program

§901. General

A. Intent of Law. To encourage the expansion, restoration, improvement, and development of existing commercial structures and owner-occupied residences in downtown, historic, and economic development districts. To provide for the development and improvement of local communities, encourage the fullest use of underutilized resources, and enhancement of the tax base.

B. Program Description. The Restoration Tax Abatement Program provides to commercial property owners and homeowners who expand, restore, improve or develop an existing structure in a downtown development district, economic development district or historic district (the "project"), the right for five years after completion of the work, to pay ad valorem taxes based on the assessed valuation of the property for the year prior to the commencement of the project.

1. The application is subject to approval by the local governing authority, the state Board of Commerce and Industry, and the governor. Assessment of the improvements, made by the project to the property, is deferred for five years by a contract entered into with the Board of Commerce and Industry. The contract may be eligible for renewal, subject to the same conditions, for an additional five years. The tax abatement is now available if property taxes have been paid on the improvements made by the project. If the property is sold, the contract may be transferred, subject to local government and board approval.

2. The program is administered by the Louisiana Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division. For more information contact the Restoration Tax Abatement Program Administrator, Box 94185, Baton Rouge, LA 70804-9185. Telephone Baton Rouge, LA (225) 342-5402.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§903. Time Limits for Filing Application

A. The applicant shall submit an "Advance Notification" on the prescribed form prior to the beginning of construction. An advance notification fee of \$100 shall be submitted with the advance notification form. The phrase "beginning of construction" shall mean the first day on which foundations are started, or, where foundations are unnecessary, the first day on which installation of the facility begins.

B. Application for tax exemption should be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, LA 70804-9185 on the form prescribed prior to the beginning of construction. Failure to file an application prior to construction may result in the application being denied.

C. An application fee (effective May 4, 1988) shall be submitted with the application based on the following:

1. 0.2 percent of the estimated total five-year property tax exemption;

2. minimum application fee is \$200; maximum application fee is \$5000;

3. please make checks payable to: Louisiana Office of Commerce and Industry.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, may not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§905. Application Requirements

A. The application must be complete (any exceptions must be authorized by C & I staff). All sections of the application form RTA1 must be filled in. Under Section 5, submit at least a one paragraph detailed description of the project with some historical overview, if applicable. For "Estimated No. of Jobs," list only the net new permanent jobs that will be created as a result of the project being applied for; do not list permanent jobs that existed prior to the beginning of the project. In addition all applicable addendum documentation, listed under "Project Documentation," must be received. The application will be returned to the applicant if the required information is not received.

B. The expansion, restoration, improvement or development must be made to an existing structure and must be located in a downtown development district, economic development district or historic district.

C. If the construction period is longer than two years, the project must be divided into two-year phases, and a separate application must be filed for each two-year increment. A separate application must be filed for each structure being restored, renovated, improved or developed. Exceptions to this Paragraph must be approved in advance by the authorized representative of the board, and approved by the board.

D. The expansion, restoration, improvement or development of a certified historic structure shall also be required to meet the National Park Service requirements for restoration projects known as the Secretary of the Interior's "Standards for Rehabilitating Historic Structures"; and, as interpreted by the Louisiana Department of Culture, Recreation, and Tourism, Division of Historic Preservation. As used in this Subsection, the phrase "certified historic structure" means any building including its structural components, which:

1. is listed on the National Register of Historic Places; or

2. is located in a registered historic district and is listed as a contributing element of that district in the National Register records under authority of the Secretary of the Interior.

E. The Board of Commerce and Industry will not consider for tax exemption any expansion, restoration, improvement or development project if substantial completion of a commercial project occurred prior to October 15, 1982. For an owner-occupied residence, construction must not have been started prior to September 7, 1990.

F. Pursuant to R.S. 47:4315.A.(4), under no circumstances will the Board of Commerce and Industry consider an application for abatement on any project for expansion, restoration, improvement or development once ad valorem taxes have been paid on the basis of an assessed valuation which reflects the improvements made by the project.

G. When the expansion, restoration, improvement, or development is to be made to an owner-occupied residence, a contract of exemption shall not be available unless a minimum rehabilitation cost equal to or greater than 25 percent of the assessed valuation of the improvements located on the property for the year prior to the commencement of the expansion, restoration, improvement, or development of the owner-occupied residence is incurred by the owner and such expansion, restoration, improvement, or development is completed within a 24-month period. *Owner-occupied residence* means any structure occupied by the owner and used principally for residential use including condominium units, duplexes, and other multiple residence structures. Owner-occupied residence projects shall not have been started prior to September 1, 1990.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:252 (March 1992).

§907. Project Documentation

A. Application is to be filed with the Office of Commerce and Industry. Please return four application forms (RTA1) completed, signed and notarized. The application should include a complete description of the project. Attach additional pages if necessary. In addition, two complete sets of the addendum documentation, Paragraphs B.1-6 and either Paragraphs B.7 or 8 are required for all projects. For projects involving owner-occupied residences Paragraphs B.9 and 10 must also be included. The Office of Commerce and Industry may request additional information.

B. The following addendum documentation must be submitted with the application (please denote each document with one of the numbers below):

1. proof of ownership: act of sale or option to acquire the property;
2. a legal property description (suitable for insertion into the exemption contract—retype if necessary), a plot map; a copy of the building permit issued for the project;
3. picture of the structure before beginning the project and a rendering of the structure as it will appear after completion of the project;
4. names and addresses of all owners (the general partner(s) or, the principal stockholders of the corporation);
5. the assessed value of the structure only (improvements) and the taxes paid on the structure only;
6. a copy of the tax invoice for the year prior to commencement of the project from the parish assessor;

7. certification from the local governing authority that the structure is in a downtown development district, an historic district, or an economic development district specifically designated as such for this program;

8. if the project is a "certified historic structure" as defined in §905.B, Certification from the Louisiana Department of Culture, Recreation, and Tourism, Division of Historic Preservation that the project meets the National Park Service requirements for restoration projects known as The Secretary of the Interior's "Standards for Rehabilitating Historic Structures." This is mandatory if the project is located in downtown New Orleans or downtown Shreveport;

9. a statement certifying that the minimum rehabilitation cost incurred to the owner-occupied residence project will be equal to or greater than 25 percent of the assessed valuation of the improvements located on the property prior to the commencement of the expansion, restoration, improvement, or development; and

10. a statement certifying that the owner-occupied residence project will be completed within a 24-month period.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:253 (March 1992).

§909. Local Governing Authority Certification and Approval

A. R.S. 47:4314.B, requires the exemption to be certified and approved by each local governing authority which is defined in R.S. 47:4313(5).

"'Local governing authority' means the governing authority of the parish in which the downtown, historic, or economic development district is located unless the district is located within a municipality, in which case 'local governing authority' shall mean the governing authority of the municipality. If the district is located partly in a municipality, 'local governing authority' shall mean the governing authority of the parish and the governing authority of the municipality."

B. Upon receipt of the application, the local governing authority shall notify each tax recipient body affected by the contract for a limited exemption and shall make available to each body the application and all supporting documents.

C. The parish or municipal governing authority shall certify that the property on which the expansion, restoration, improvement of development is being made is located within an established downtown, historic, or economic development district, whether established by a local governing authority or in accordance with law. This certification shall be submitted to the Office of Commerce and Industry with its decision to approve or disapprove.

D. The local governing authority shall determine whether the applicant's land usage meets the definition of "commercial property" based on their zoning ordinance, land use plan, downtown or economic revitalization plan, or any other development code and shall certify that the property

meets their criteria. This certification shall be submitted to the Office of Commerce and Industry along with their recommendation.

E. Before notifying the board of its approval or disapproval of the application, the local governing authority shall conduct a public hearing. Notice of the time and place of the hearing shall be published at least twice in the official journal of the local governing authority, and at least 10 days shall elapse between the first publication and the date of the hearing. Each affected tax recipient body shall be given written notice of the hearing at least 10 days prior to such hearing. After such hearing, the local governing authority shall determine whether to approve or disapprove the application.

F. The local governing authority shall, within 60 days after receipt of the application from the Office of Commerce and Industry, file with the department a statement of its decision to approve or disapprove the application, the reasons therefor, and any supporting documents.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:98 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992).

§911. Effective Date of Contract

A. The owner of the existing structure or structures, shall carefully document the beginning date of the effective use of the structure, and also document the date that construction is essentially complete. The contractee must file that information with the Office of Commerce and Industry on the prescribed Project Completion Report within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially completed, whichever occurs first. The Office of Commerce and Industry will indicate with a return of a copy of that report the effective date of the tax exemption contract, which shall be December 31 of the year in which effective use of the structure began or construction was essentially complete, whichever was sooner.

B. As the assessment date for Orleans Parish is August 1, the effective date of contract for a structure located in Orleans Parish shall be July 31 of the applicable year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992).

§913. Affidavit of Final Cost

A. Within six months after construction has been completed, an affidavit of final cost showing complete cost of the exempted project shall be filed on the prescribed form together with a fee of \$100 for the inspection which will be conducted by the Office of Commerce and Industry (make check payable to the Office of Commerce and Industry).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992).

§915. Reports to Parish Assessor

A. The property owner agrees to file annually with the assessor of the parish in which the structure is located any taxpayer's report required by law on forms furnished by the assessor in order that the exempted property may be separately listed on the assessment rolls. Notwithstanding the fact, taxes will be collected on the exempt property during the period of exemption at the assessed valuation of the property the year prior to the commencement of the expansion, restoration, improvement, or development of the property.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992).

§917. Contract Can Be Transferred

A. If the property for which the limited exemption has been granted is sold the limited exemption may be transferred for the remainder of its term to the new owner, provided such transfer is approved by the local governing authority, the Board of Commerce and Industry, and the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:254 (March 1992).

§919. Violation of Rules or Documents

A. On the board's initiative or whenever a written complaint or violation of terms of the tax exemption rules or contract is received, the assistant secretary of the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and he shall have full authority for such investigation including, but not exclusively, authority to call for reports or other pertinent records or other information from the contractee. If the investigation substantiates a violation, he may present the subject contract to the board for formal cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:99 (February 1985), amended LR 12:665 (October 1986), amended by the Department of Economic Development, LR 18:255 (March 1992).

§921. Contract Renewal

A. Effective January 1, 1991, contracts may be renewed, subject to the same conditions, for an additional five years extending such right for a total of 10 years from completion of the work.

B. In order to be eligible for renewal of an existing contract the Project Completion Report and affidavit of final cost, contract addendum documents, must have been filed for the original contract; taxes cannot have been paid on the improvements pursuant to R.S. 47:4315.A.(4); and a renewal application form must be submitted. The following documentation should be submitted:

1. three copies of the application, form RTA1, marked "Renewal," containing current data;

2. a written, notarized certification (three copies) from the applicant, referencing the original application/contract number, that "taxes have not been paid on improvements exempted under contract number (number), for (owner name), pursuant to R.S. 47:4315, Paragraph A.(4) and the Restoration Tax Abatement Program Rules"; and

3. a renewal fee check for \$50, payable to the Office of Commerce and Industry.

C. The same approval process, as used for the original application and contract, will be followed for renewal contracts. Applications must first be filed with the Office of Commerce and Industry. They will then be sent to the local governing authority for approval. If approved by the local governing authority, the application will be submitted to the Board of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4311-4319.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, LR 18:252 (March 1992).

Chapter 11. Quality Jobs Program

§1101. General

A. Intent of Law

1. To provide benefits used primarily as an inducement for businesses to locate or expand existing operations in Louisiana in accordance with *Louisiana Vision 2020* with a focus on Louisiana's traditional and seed clusters:

- a. to provide appropriate incentives to support employers who will make significant contributions to the development of the economy of the state;

- b. to provide or make available incentives that shall be directly related to the new direct jobs created as the result of the employer locating or expanding existing operations in the state;

- c. the Departments of Economic Development, Revenue and Labor shall implement the provisions of this program.

B. Program Description

1. A qualified employer must create a minimum of five new direct jobs. If the employer employs more than 50 employees prior to the beginning of the contract, it must have an annual gross payroll for new direct jobs equal to or greater than \$500,000. If the employer employs 50 or less employees, it must have an annual gross payroll for new direct jobs equal to or greater than \$250,000. The annual payroll for new direct jobs must be created by the third fiscal year of the contract.

2. A qualified employer must employ full-time employees working 35 or more hours per week in new direct jobs. If the qualified employer is a Call Center (NAICS Code 56142) it must employ full-time employees working 30 or more hours per week in new direct jobs.

3. The amount of the rebate is directly related to the new direct jobs created and to the new annual gross payroll generated as the result of a qualified employer locating or expanding in the state.

4. The qualified employer is entitled to sales and use tax rebates authorized in R.S. 51:1787 if the employer meets the Enterprise Zone Program hiring requirements.

5. Approval by the Louisiana Board of Commerce and Industry and the governor of Louisiana is required, after consultation with the Secretary of the Department of Labor and the Secretary of the Department of Revenue.

6. An establishment that is engaged in retail; business associations and professional organizations; state and local government enterprises; real estate agents, operators, and lessors; automotive rental and leasing; local solid waste disposal, local sewage systems, and local water systems; nonprofit organizations; the gaming industry; and attorneys shall not be eligible for rebates under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2305 (November 2003).

§1103. Definitions

Affiliate—

1. any business entity;

- a. controlled by the applicant business;

- b. which is a controlling owner of the applicant business; or

- c. which is controlled by an entity described in Subparagraphs a or b;

2. for purposes of this definition, *control* is defined as owning either directly or indirectly through control of or by another business entity:

- a. a majority of the voting stock or other voting interest of such business entity or the applicant business; or
- b. stock or other interest whose value is a majority of the total value of such business entity or the applicant business;
3. a business entity may be treated as a non-affiliate if the applicant business proves that neither the applicant business nor any of its controlling owners exercise authority over the management, business policies and operations of the business entity.

Basic Health Benefits Plan or the *Health Insurance Coverage*—that which is required to be offered and/or provided shall include coverage for basic hospital care, coverage for physician care, and coverage for health care which shall be the same as that provided to executive, administrative, or professional employees.

Benefit Rate—one of the following percentages:

1. for new direct jobs created which pay at least 1 3/4 times the federal minimum hourly wage rate, the benefit rate shall be 5 percent;
2. for new direct jobs created which pay at least 2 1/4 the federal minimum hourly wage rate and meet one of the following criteria, the benefit rate shall be 6 percent;
 - a. the new direct jobs are located in a distressed region designated by the Department of Economic Development. If an area is designated a distressed region, such designation shall be maintained for the period of the initial contract and during the renewal contract. To qualify an employer shall either be located in a distressed region or at least 50 percent of the new direct jobs of the employer shall be filled by persons who reside in a distressed region; or
 - b. the new direct jobs are with an employer categorized in a traditional or seed cluster identified by the Louisiana Economic Development Council and the Department of Economic Development. The Department of Economic Development shall promulgate rules and regulations defining traditional or seed cluster employers prior to these rules taking effect.

Department—the Louisiana Department of Economic Development.

Distressed Region—one of the following:

1. a parish with a per capita income in the lowest 25 percent of the parishes; or
2. a census tract and block group that is below the state median per capita income, based on the most recent federal decennial census.

Employer—a legal person who executes a contract with the department pursuant to the provisions of R.S. 51:2452-2462, and who offers, or will offer within 90 days of the effective date of qualifying for the incentive rebates, a basic health benefits plan to the individuals it employs in new direct jobs:

1. for advance notifications filed with the department before June 1, 2000, the employer shall pay not less than 50 percent of the insurance premium;

2. for advance notifications filed with the department on or after June 1, 2000, but before May 1, 2002, the employer shall pay not less than 75 percent of the premium for full-time employees. The employer shall offer group coverage for dependents of full-time employees, but the employer is not required to pay the premium;

3. for advance notifications filed with the department on or after May 1, 2002, the employer shall offer the employee the choice of one of the following health insurance coverage programs:

a. the employer shall pay not less than 85 percent of the total premium for full-time employees choosing to participate under individual coverage and shall offer coverage for dependents of full-time employees, but the employer is not required to pay the premium; or

b. the employer shall pay not less than 50 percent of the total premium for full-time employees who choose to participate and choose to cover their dependents.

Gross Payroll—wages for the new direct jobs upon which the specified benefit rate is calculated.

NAICS—North American Industrial Classification System

New Direct Job—

1. employment in the state of an employee:
 - a. working the average hours per week provided in §1101.B.2; and
 - b. who was not previously on the payroll of;
 - i. the employer;
 - ii. the employer's parent entity, subsidiary, or affiliate; or
 - iii. any business whose physical plant and employees are substantially the same as those of the employer;
2. a new direct job:
 - a. shall be with an employer that has qualified for the incentive rebate;
 - b. did not exist in this state prior to the advance notification being filed by the employer with the department pursuant to the provisions of R.S. 51:2455;
 - c. shall be filled by an individual domiciled in the state of Louisiana;
 - d. shall not be a job that is created by an employer as a result of the employer securing a contract to supply goods and services in the state of Louisiana, if another business was under an obligation to supply the same goods and services from a facility located in Louisiana and such obligation was terminated within three months prior to filling the job by the employer; and

e. shall not include an employee retained following the acquisition of all or part of an in-state business by an employer.

Wages—all remuneration for services from whatever source, including commissions and bonuses and the cash value of all remuneration in any medium other than cash, and dismissal payments which the employer is required by law or contract to make. Gratuities shall be estimated in accordance with the Internal Revenue Code and its rules and regulations. Wages shall not include the following:

1. the amount of any payment with respect to services performed after January 1, 1951, to or on behalf of an individual in its employ under a plan or system established by an employer which makes provision for individuals in its employ generally, or for a class of classes of such individuals, including any amount paid by an employer for insurance or annuities, or into a fund to provide for any such payment, on account of:

- a. retirement;
- b. sickness or accident disability;
- c. medical and hospitalization expenses in connection with sickness or accident disability;
- d. death, provided the individual in its employment does not have the option to receive, instead of provision of such death benefit, any part of such payment or, if such death benefit is insured, any part of the premium or contributions to premiums paid by his employer or does not have the right, under the provisions of the plan or system or policy of insurance providing for such death benefit, to assign such benefit or to receive cash consideration in lieu of such benefit either upon his withdrawal from the plan or system providing for such benefit or upon the termination of such plan or system or policy of insurance or of his services with such employer; or

e. a bona fide thrift or savings fund, providing such payment is conditioned upon a payment of a substantial sum by such individuals in its employment and such sum paid by the employer cannot under the provisions of such plan be withdrawn by an individual more frequently than once in any 12 month period, except upon an individual's separation from that employment;

2. any payment made to, or on behalf of, an employee or his beneficiary under a cafeteria plan of the type described in 26 U.S.C. 125 and referred to in 26 U.S.C. 3306(b)(5)(G);

3. any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such financing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under an educational assistance program as described in 26 U.S.C. 127 or a dependent care assistance program as described in 26 U.S.C. 129 and as referred to in 26 U.S.C. 3306(b)(13);

4. the payment by an employer, without deduction from the remuneration of the individual in its employ, of the tax imposed upon such individual in its employ under

Section 3101 of the federal Internal Revenue Code with respect to domestic services in a private home of the employer or for agricultural labor performed after December 31, 1980;

5. dismissal payments that the employer is not required by law or contract to make; or

6. the value of any meals and lodging furnished by or on behalf of an employer to an individual in his employ, provided the meals and lodging are furnished on the business premises of the employer for the convenience of the employer.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:961 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2306 (November 2003).

§1105. Qualified Employers

A. To qualify for a contract an employer must meet one of the following provisions:

- 1. be one of the six Vision 2020 cluster industries:
 - a. medical and biomedical;
 - b. micromanufacturing;
 - c. software, auto regulation, Internet, and telecommunications technology;
 - d. environmental technologies;
 - e. food technologies; or
 - f. materials;
- 2. be a manufacturer whose primary function is identified by NAICS Codes 113310, 211, 213111, 541360, 311-339, 511-512, and 54171;
- 3. be an oil and gas field services business as defined by the NAICS Code 213112 and must pay not less than \$30,000 per year for each new direct job, and Louisiana must be the national or regional headquarters of a multi-state business whose service territory includes Louisiana and the Gulf of Mexico;
- 4. have or will have sales of at least 75 percent of its total sales within one year to:
 - a. out-of-state customers or buyers;
 - b. in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use; or
 - c. the federal government;
- 5. meet the requirements of both Subparagraphs 5.a and b:
 - a. have or will have sales of at least 50 percent of its total sales within one year to:
 - i. out-of-state customers or buyers;

ii. in-state customers or buyers if the product or service is resold by the purchaser to an out-of-state customer or buyer for ultimate use; or

iii. the federal government; and

b. meet one of the following requirements:

i. be classified as an industry defined by NAICS codes that have a direct state employer multiplier of 2.0 or greater in accordance with the most current edition of the Regional Input/Output Multiplier System II or its successor;

ii. be a central administrative office that influences the environment in which data processing, customer service, credit accounting, telemarketing, claims processing, and other administrative functions are accomplished;

iii. have data processing, back office operations, and telephone call center operations (NAICS Code 56142);

iv. be a wholesale trade business (NAICS Code 42) and have a distribution center of not less than 25,000 square feet;

6. must be a National Basketball Association Team, which relocates to Louisiana and may enter into a contract prior to November 1, 2003; however, contracts with such teams:

a. shall not grant a tax rebate greater than \$3,650,000 in any taxable year;

b. shall not allow the salary of any person who owns more than 25 percent of such team to be included in the gross payroll to calculate the rebate;

c. may be renewed for an additional five years, provided the team has complied with all the terms of the contract, has not performed, or failed to perform, any act which made the applicant liable for suspension;

d. shall be awarded a benefit rate of no more than 5 percent; and

e. shall include the wages of players and coaches of the team subject to Louisiana income tax in the calculation of the gross payroll, even though the players and coaches may be non-residents of Louisiana.

B. The following employers or persons shall not be eligible for benefits provided under this Chapter:

1. retail employers identified by NAICS Code Sections 44 and 45;

2. business associations and professional organizations identified by NAICS Code 8139;

3. state and local government enterprises;

4. real estate agents, operators, and lessors;

5. automotive rental and leasing;

6. local solid waste disposal, local sewage systems, and local water systems businesses;

7. nonprofit organizations;

8. employers engaged in the gaming industry identified by NAICS Code Sections 713210 and 721120; and

9. attorneys.

C. The department may promulgate rules annually listing other ineligible employers, professions, or service industries that are not eligible for rebates under the provisions of this program. Such rules shall not take place until the Louisiana Economic Development Council, the House Committee on Ways and Means, and the Senate Committee on Revenue and Fiscal Affairs approves.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2307 (November 2003).

§1107. Application Fees, Timely Filing,

A. The applicant shall submit an advance notification on the prescribed form before locating the establishment or the creation of any new direct jobs in the state. All financial incentive programs for a given project shall be filed at the same time, on the same advance notification form. An advance notification fee of \$100, for each program applied for, shall be submitted with the advance notification form. An advance notification filing shall be considered by the department to be a public record under Louisiana Revised Statutes, Title 44, Chapter 1, Louisiana Public Records Law, and subject to disclosure to the public.

B. An application for the Quality Jobs Program must be filed with the Office of Business Development, P.O. Box 94185, Baton Rouge, Louisiana 70804-9185 on the prescribed forms within 90 days of the creation of the jobs or completion of the project, whichever occurs first. Failure to file an application may result in the application being denied or restricted.

C. An application fee shall be submitted with the application based on the following:

1. 0.2 percent times the estimated total incentive rebates (see application fee worksheet to calculate);

2. the minimum application fee is \$200 and the maximum application fee is \$5,000 for a single project;

3. the check is made payable to the Louisiana Department of Economic Development.

D. A Project Completion Report shall be filed within 90 days after the completion of construction/installation.

E. An Affidavit of Annual Certification shall be filed within 90 days of completing a company's fiscal year. A fee of \$100 must be filed with the initial report.

F. An application to renew a contract shall be filed within 60 days of the initial contract expiring. A fee of \$50 must be filed with the renewal contract.

G. The Office of Business Development reserves the right to return the advance notification, application, or affidavit of annual certification to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications, applications, or affidavits of annual certification that have been accepted for eligible projects, shall not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:963 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003).

§1109. Application Review, Analysis, Evaluation, Determination

A. Application Review

1. The department will assign a project number and review the advance notification form to determine if the employer is qualified pursuant to §1105.A. The employer will be notified of the project number and due date of the application packet.

2. The application packet must be completed and returned to the Department of Economic Development by the due date. The department must authorize any omissions to the application by the employer in writing. If the application is incomplete, the department may request additional information prior to further action. The application fee must accompany the application packet pursuant to §1107.C.

B. Analysis, Evaluation, Determination

1. The department shall determine qualification for the employer:

a. the employer shall create a minimum of five new direct jobs;

b. the employer shall meet the annual payroll requirements pursuant to §1101.B.1 and 2;

c. the employer shall offer a basic health benefits plan to the individuals it employs in new direct jobs pursuant to §1103.*Basic Health Benefits Plan*. A copy of said plan must be provided to the department;

d. the department will analyze the proposed new direct jobs to determine they meet the program criteria;

e. the employer must furnish all sources of remuneration that make up the wages that are used in the determination of the gross payroll. A listing that will identify all positions and wages of all employees shall be furnished to verify the gross payroll;

f. the department will determine the effective date of the contract.

2. The department shall determine the benefit rate pursuant to §1103.*Benefit Rate* and §1105.A.5.c.(5).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2308 (November 2003).

§1111. Consultation with the Departments of Labor and Revenue

A. The department will provide a copy of the application and all relative information to the Department of Labor and the Department of Revenue for review. Either the Department of Labor or the Department of Revenue or both may require additional information from the applicant.

B. The department must obtain a letter-of-no-objection or a letter-of-approval from the Department of Labor and the Department of Revenue, prior to submitting the application to the Board of Commerce and Industry for action.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:964 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003).

§1115. Economic Development Recommendations to Board

A. The department after review and analysis will prepare the application information in a format suitable for presentation to the Board of Commerce and Industry.

B. The department will make a presentation to the Board of Commerce and Industry as to the economic impact and the benefits to be received.

C. The department will make recommendations for approval or disapproval, and will provide information on behalf of the Department of Labor and the Department of Revenue.

D. The Board of Commerce and Industry must approve the application prior to a contract being issued.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003).

§1117. The Contract

A. The Board of Commerce and Industry or its successor, after no-objection from the secretaries of the Department of Labor and the Department of Revenue, with the approval of the governor, may enter into a contract with an employer for a period up to five years.

1. A contract with an employer shall be limited to a single physical location, and the benefits the employer shall receive will be based solely upon the operations at that location.

2. An employer may have more than one contract covering multiple locations; however, the eligibility of each location shall be determined separately, with the exception of determining new direct jobs. The department shall certify that the employer has a net overall increase in employment statewide for each new direct job.

B. The contract may be renewed for an additional five years provided that:

1. the employer has complied with all the terms of the contract; and

2. the employer has met the statutory minimum hourly wage for the new direct jobs subject to the benefit rate established when the contract was entered into and the hourly wage has increased by an amount which is equal to or greater than one of following:

a. the wage rate has grown by the percentage increase in the Consumer Price Index published by the U.S. Department of Labor for the five years of the initial term of the contract, compounded; or

b. the wage rate has increased by 2 percent for the five years of the initial term of the contract, compounded.

C. No contract shall be executed if:

1. the employer has defaulted, not repaid a loan, or not repaid an obligation involving public funds;

2. the employer declared bankruptcy and the obligation to pay or repay public funds or monies was discharged as part of such bankruptcy a contract shall not be executed;

3. the employer is in default on any filing or payment to the state, to any of its agencies, or to any of its political subdivisions, and in which an assessment or judgment is final; or

4. the employer employs more than 50 employees and has entered into a contract or other agreement with any person or entity where required payment is contingent upon their success in obtaining the benefits of this program. If an employer employs less than 50 employees and enters into such contract, this provision will not prohibit such employer from being eligible for a Quality Jobs Act Program contract renewal. However, if at the time of such renewal, such employer employs more than 50 employees, the employer will not be eligible for renewal if the employer has entered into a contract where required payment is contingent upon success in obtaining benefits related to the contract renewal.

D. Contract Voided. Violation of the provisions of §1117.C shall void the contract and any rebates paid to the employer prior to the date the violation is discovered, the rebates will be recovered by adding to the income tax liability for the taxable year the violation occurred. Additionally, interest will be assessed from the date of the violation and the employer shall receive no further rebates.

E. Contract Suspended

1. If a rebate is received by an employer as provided under this provision and the employer is rendered an assessment or judgment that is final and nonappealable in favor of the state or any of its agencies or any of its political subdivisions, the contract shall be suspended pending the settlement of the assessment. No rebate shall accrue to the employer under the contract during the period of suspension.

2. After the employer's fiscal year for which the employer applied for his third annual rebate, if at any other time during the 10-year contract period the employer applies for a rebate following the end of the employer's fiscal year, and the verified gross payroll for the fiscal year does not demonstrate the required minimum of five new direct jobs and the gross payroll does not equal or exceed a total of \$500,000 or \$250,000, whichever is applicable to said contract, the rebates shall be suspended and shall not be resumed until such time as the payroll and job requirements are met. No rebate shall accrue or be paid to the employer during a period of suspension.

F. Contract Rebates Reduced

1. If the employer receives a rebate and it is subsequently determined the employer did not qualify for the rebate, future rebates will be reduced by the amount received by the employer.

2. If there are no future rebates to deduct the amount owed the state, the tax liability of the employer will be increased by the amount of the rebate for the taxable period non-qualification was determined.

3. The Secretary of the Department of Revenue may recover any rebates previously granted to an employer but which rebates disallowed as authorized by R.S. 47:1561.2. The employer shall waive prescription for the purpose of recovering any disallowed rebates.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2309 (November 2003).

§1119. Incentive Rebates

A. Except as otherwise provided herein an employer who has entered into a contract may receive a rebate that is calculated by multiplying the benefit rate, as defined in §1103.*Benefit Rate*, times the annual gross payroll of new direct jobs, as defined in §1103.*New Direct Job*, for the specified period in the contract.

B. Notwithstanding anything to the contrary in either Chapter 1 or Chapter 5 of Subtitle II of Title 47 of the Louisiana Revised Statutes of 1950, as amended, the following rules shall apply with respect to the application of the rebate allowed.

1. The incentive rebate allowed an S corporation shall be paid to the S corporation entity and not the individual shareholders of the corporation.

2. The incentive rebate allowed a partnership, limited liability partnership (LLP), or limited liability company (LLC) shall be paid to the entity and shall not be paid to the individual partners or members of the entity.

C. Notwithstanding any other provision of law to the contrary in Title 47 of the Louisiana Revised Status of 1950, as amended, the Secretary of the Department of Revenue shall make the rebate.

D. In order to receive the rebate provided for by the contract, an employer shall apply with the department.

1. The application shall be filed on the prescribed form designated by the department and shall contain the required information to determine if the applicant is qualified.

2. The application shall contain a sworn statement, by a duly authorized officer of the employer, listing the names of persons or other entities who have received or who will receive any payment or other consideration from the employer for the purpose of representing the employer in applying for or receiving the benefits of this program.

E. In order to qualify to receive the rebate, the employer applying shall meet the requirements of §1101.B.1 and 2.

F. The department shall determine if an applicant is qualified to receive rebates.

G. The approved employer shall apply annually for rebates with the department in the prescribed format and provide the information as described in §1123. The employer may be audited by the department to verify eligibility. The rebates may continue as long as the employer complies with the approved contract and remains eligible.

H. The benefit rate shall be determined annually based on information provided by the employer on the rebate claim reports made annually.

I. The payroll rebates shall be paid annually after the employer submits the required annual report as specified in §1123 and the department determines the employer is eligible for the rebate for that fiscal year. The report shall be filed within 90 days following the end of the employer's fiscal year with the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Financial Incentives Division, LR 22:965 (October 1996), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003).

§1121. Rebate Payments

A. In addition to the payroll rebates, an employer shall be entitled to sales and use tax rebates as authorized in R.S. 51:1787, if the employer meets the hiring requirements as defined in the Enterprise Zone Program and meets the other limitations, procedures, and requirements of R.S. 51:1787 and the rules promulgated there under, Louisiana Administrative Code, Title 13, Part I, Chapter 7.

B. An employer may request rebates of local sales and use taxes. This request must be accompanied by an endorsement resolution approved by the local governing authority of the appropriate municipality, parish, port district, or industrial district board in whose jurisdiction the employer is or will be located and taxes are paid. The endorsement resolution must clearly state if the local governmental subdivision intends to rebate the allowable sales and use taxes for the project. A copy of the resolution must be filed with the Department of Economic Development prior to action taken by the board on the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2310 (November 2003).

§1123. Rebate Claim Filing

A. Payroll Rebate

1. A qualified employer must file annually an Affidavit of Annual Certification within 90 days of the completion of employer's fiscal year with the department to claim the payroll rebate.

2. The annual report will provide information on the number of employees at the site, the number of employees statewide, the number of new direct jobs created at the site, the number of hours worked by each employee weekly, the hourly wage paid employees in the new direct jobs, the position title, the employee's address, the hire date, the term date, the insurance acceptability, the percentage of the insurance paid by the employer, and the annual gross wages.

3. The department may request additional information from the employer as may be necessary to determine the eligibility for the annual rebate for that fiscal year or may request the employer revise the annual report.

4. Upon approval the department will advise the Department of Revenue the eligible rebate. The Department of Revenue shall make payment of the rebate after offset, if applicable, under R.S. 47:1622. The rebate shall be considered a refundable overpayment for the purpose of such offset.

5. If the actual verified annual gross payroll for the employer's third fiscal year does not show a minimum of five new direct jobs and does not equal or exceed a total annual payroll of \$500,000 or \$250,000, whichever is applicable, the employer will be determined to be ineligible under this Chapter. The Department of Revenue will be notified and the tax liability for the current tax period in which the failure to meet the requirements occurs shall be increased by the amount of rebates previously allowed.

B. Sales and Use Tax Rebate

1. An annual Employee Certification Report must be filed on all active contracts for the employer to qualify for the sales and use tax rebate under this Chapter.

2. The "beginning number" from which the net new jobs will be determined shall be the number of employees that an employer has on the day before the effective date of the contract.

3. An employee count will be taken from the employer's entire contiguous site for the purposes of calculating the jobs.

4. Monthly totals of permanent full time employees will be averaged over a minimum of six months to determine the number of jobs generated. Part time employees may be counted after completing a minimum of six months of continuous employment comprised of a minimum of 20 hours every week during that continuous period. Only employees reported on the Department of Labor's Unemployment Insurance Report will be used to calculate the average monthly total. In no case shall the new employees exceed the net increase in the total employment.

5. If the Employee Certification Report substantiates that the company has not met the hiring requirements under these rules, the employer will not be eligible for the sales and use tax rebate. The department will notify the Department of Revenue of the ineligibility.

C. Sales and Use Tax Rebate Advance Notification

1. Initial Sales and Use Tax Rebate Advance Notification. An employer who receives a Quality Jobs Act contract and who meets the requirements for sales and use tax rebates as authorized in R.S. 51:1787 and §1121 of these rules, will satisfy the advance notification requirement for sales and use tax rebates for the initial period of the Quality Jobs Act contract by submission of the Quality Jobs Act Program advance notification referred to in §1107 of these rules. The initial sales and use tax rebate period may begin on or after the Quality Jobs Act contract effective date and shall be no longer than twenty-four months, except to the extent that a longer period is authorized under the Enterprise Zone Program. In order to receive rebates of local sales and use taxes, the employer must satisfy the provisions of §1121.B of these rules.

2. Subsequent Sales and Use Tax Rebate Periods. On the expiration of the initial sale and use tax rebate period under the Quality Jobs Act contract, an employer may file additional advance notifications on Form, "Quality Jobs Act Sales and Use Tax Rebate Advance Notification," to seek additional state and local sales and use tax rebates as authorized in R.S. 51:1787 and §1121 of these rules if the employer meets the hiring requirements as defined in the Enterprise Zone Program and meets the other limitations, procedures, and requirements of R.S. 51:1787 and the rules promulgated thereunder, *Louisiana Administrative Code*, Title 13, Part I, Chapter 7, for each subsequent sales and use tax rebate period during the term of the Quality Jobs Act contract. Each subsequent sales and use tax rebate period shall be no longer than twenty-four months, except to the extent that a longer period is authorized under the Enterprise Zone Program. The local endorsement resolution

requirements of §1121.B shall apply to each subsequent sales and use tax rebate period for which an employer under a Quality Jobs Act contract seeks the rebate of local sales and use taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003).

§1125. Prohibited Incentives

A. A qualified employer that enters into a contract under this Chapter shall not be eligible to receive the other credits or exemptions provided for in the following provisions of law except as provided for in R.S. 51:2456(B):

1. R. S. 47:34 (tax credit for generation of new jobs in Louisiana);

2. R.S. 47:38 and 287.757 (income tax credit for conversion of vehicles to alternate fuel usage);

3. R.S. 47:4301 through 4306 (Industry Assistance Program - income tax, corporate franchise tax, state sales tax, and excise tax exemptions for manufacturing establishments);

4. R.S. 47:6004 (employer credit for employment of previously unemployed person);

5. R.S. 47:6009 (Louisiana basic skills training tax credit-income tax credit);

6. R.S. 47:6010 (employer income tax credit for employee alcohol and substance abuse treatment programs);

7. R.S. 51:1787 (Enterprise Zone Program - incentives tax exemption from sales and use tax materials to be used in the construction of a building and for machinery and income tax credit for each employee in an enterprise zone);

8. R.S. 47:287.748 (re-entrant jobs credit for formerly incarcerated employees-corporate income tax);

9. R.S. 47:287.749 (corporate income tax credit for new jobs);

10. R.S. 47:287.753 (neighborhood assistance income tax credit).

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2311 (November 2003).

§1127. Penalties

A. Penalties are provided under R.S. 51:2460 for false or fraudulent information in making application, making a claim for rebate, or other instrument.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2312 (November 2003).

§1129. Termination of Program

A. The Board of Commerce and Industry shall approve no new applications for rebates as provided for under this Chapter on and after January 1, 2005.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2312 (November 2003).

§1131. Severability

A. If any Section or provision of this Chapter is held invalid, such invalidity shall not affect other provisions of this Chapter. Any provision of this Chapter that is in conflict with R.S. 51:2451-R.S. 51:2462 or any other statute will be invalid and will be severable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2451-2462 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:2312 (November 2003).

Chapter 13. Louisiana Biomedical Research and Development Park Program

§1301. General

A. Relief from taxation may be granted as provided under R.S. 46:318.1(E).

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1303. Definitions

A. For purposes of these rules, the following terms shall have the meaning hereafter ascribed to them, unless the context clearly indicates otherwise: *Medical Concerns* which are technology-based or innovative growth oriented are defined as companies engaged in the application of science especially to industrial or commercial objectives. Such companies should be engaged in the development, manufacture, and sale of products that emerge from or depend upon the practical application of scientific or technological advances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1305. Qualifications

A. To qualify for the Louisiana Biomedical Research and Development Park Program tax incentives an applicant must be a *medical concern* as defined in this rule, must provide documentation evidencing its location in the park area, as described in R.S. 46:813.A, and must demonstrate, by written statement, its viability and ability to contribute to the

improved health care of citizens and through improved economic conditions, creation of jobs and to the development of the park area. The statement should include all factors which are relevant to the continued and expanded operations of the applicant including, but not limited to, the following:

1. the benefits to the state in terms of continued employment opportunities, expenditures for goods and services, contributions to the revenue base of the state and local governments, and the creation of new and additional permanent jobs;
2. competitive conditions existing in other states or in foreign nations;
3. the economic viability of the applicant, and the effect of any tax exemptions or credits on economic viability;
4. the effects on the applicant of temporary supply and demand conditions;
5. the effect of casualties and/or natural disasters;
6. the effects of United States and foreign trade policies;
7. the effect of federal laws and regulations bearing on the economic viability within the state of the applicant; and
8. the competitive effect of like or similar exemptions or credits granted to other applicants.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1307. Filing of Applications

Editor's Note: Applications must be filed now at the following address:

Office of Business Development Services
Box 94185
Baton Rouge, LA 70804-9185

A. An "Advance Notification" of intent to file for the Louisiana Biomedical Research and Development Park tax incentives shall be filed prior to the beginning of construction, acquisition of equipment, and/or occupation of facilities. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form. Any purchases made prior to the filing of the advance notification may not be eligible for exemption and/or credit. Applications must be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, LA 70804-9185 on the prescribed form, along with any required additional information, within six months after the beginning of construction or three months before completion of construction or the beginning of operations, whichever occurs later.

B. Applications must be submitted to the Office of Commerce and Industry at least 60 days prior to the Board of Commerce and Industry meeting where it will be heard. An application fee shall be submitted with the application

based on 0.2 percent of the estimated total amount of taxes to be rebated, exempted, or credited. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. Within six months after construction has been completed, the applicant from the establishment shall file, on the prescribed form, an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing location of all facilities claiming exemptions in the project will be submitted in order that the property for which rebates are claimed may be clearly identified.

D. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemptions or the fee submitted is incorrect. The document may be resubmitted with the correct fee and/or information. Documents will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, renewals, or affidavits of final cost which have been accepted, will not be refundable.

E. The applicant proposing a project with a construction period greater than two years must file a separate application for each construction phase. An application fee shall be submitted with each application filed, based on the fee schedule in §1307.B above.

F. The Office of Commerce and Industry is authorized to grant a six-month extension for filing of the application. An authorized representative of the Board of Commerce and Industry must approve further extension. All requests for extension must be in writing and must state why the extension is requested.

G. Please make checks payable to:

Louisiana Office of Commerce and Industry

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1541 (December 1993).

§1309. Recommendations of the Secretaries of Economic Development and Revenue and Taxation

A. The Office of Commerce and Industry shall forward the application with its recommendations to the Secretary of Economic Development and the Secretary of Revenue and Taxation for their review. Within 30 days after the receipt of the application the secretaries of Economic Development and Revenue and Taxation shall submit their recommendations (the Secretary of Revenue and Taxation shall submit a Letter of No Objection in lieu of a Letter of Recommendation) in writing to the assistant secretary of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1311. Application Shall Be Presented to the Board of Commerce and Industry

A. The Office of Commerce and Industry shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Economic Development and Revenue and Taxation and an endorsement resolution of the local taxing authorities and shall make recommendations to the board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1313. Board of Commerce and Industry Enters into Contract

A. Upon approval of the application, by the governor and the Joint Legislative Committee on the Budget, the Board of Commerce and Industry shall enter into contract with the applicant for exemption of the taxes allowed by R.S. 46:813.

1. A copy of the contract shall be sent to the Department of Revenue and Taxation and to the local political subdivision's tax authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1315. Rebates on Sales/Use Taxes

A. The contract will not authorize the applicant to make tax-free purchases from vendors.

B. State sales and use tax rebates shall be filed according to official Department of Revenue and Taxation procedures.

C. Local sales and use tax rebates shall be filed in the manner prescribed by the local taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1317. Violations of Rules, Statutes, or Documents

A. On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents, or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation substantiates a violation, the

assistant secretary may present the subject contract to the board for formal cancellation. The businesses with contracts shall then remit any and all taxes that would have been imposed but for the issuance of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1542 (December 1993).

§1319. Affidavits Certifying Eligibility Filed Annually

A. On January 15 of each year, the businesses with contracts will file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §705. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further rebates or credits will be granted. The Department of Commerce will notify the Department of Revenue and Taxation within 30 days after revocation of a contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1321. Appeals Procedure

A. Applicants who wish to appeal the action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the screening committee of the Board of Commerce and Industry during which their appeals will be heard.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1323. Income and Franchise Tax Requirements

A. In order for a business to benefit from the income and corporate franchise tax benefits of this Chapter, an estimated five-year income and franchise tax liability must be provided to the Board of Commerce and Industry by the applicant. This information will be used only to estimate the economic impact of the project to the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:911 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1325. Hearing Procedures

A. Applicants and/or their representatives will be notified of the date of the Board of Commerce and Industry meeting at which their application will be considered. The applicant should have an officer of authority present who is able to answer any questions the Board of Commerce and Industry might have about the information contained in the application. In the event there is not a representative present, the application may be deferred.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:911 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

§1327. Contract Execution Procedures

A. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days of receipt. Certified copies will then be forwarded to the proper local governmental taxing authority and to the Department of Revenue and Taxation.

B. The taxing authorities of the local governmental subdivision issuing the endorsement resolution should be contacted to determine their procedure for rebating their sales/use tax.

C. Applicants will be contacted by the staff of the Department of Revenue and Taxation who will advise the proper procedures to follow in order to obtain the state sales/use tax rebate.

D. Notification of any change which may affect the contract should be made to the Office of Commerce and Industry. This includes any changes in the ownership or operational name of the firm holding a contract or the abandonment of operation. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 46:811 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Financial Incentives, LR 19:1543 (December 1993).

Chapter 15. Louisiana University Research and Development Parks Program

§1501. General

A. Intent of Law. To provide for the reduction in taxes for concerns located in research and development parks operating in association with a public or regionally accredited independent university in the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:631 (April 2000).

§1503. Definitions

A. For purposes of these rules, the following terms shall have the meaning hereafter ascribed to them, unless the context clearly indicates otherwise.

Concern—any technology-driven or innovative, growth-oriented company engaged in the application of science, especially to industrial or commercial objectives. Such companies should be engaged in the development, manufacture, assembly or sale of products or services that emerge from or depend upon the practical application of scientific or technological advances.

Construction Period—begins the first day on which foundations are started, or where foundations are unnecessary, the first day that materials or equipment for that project are received, and ends the day that construction is completed or operations begin, whichever is later.

Develop—to aid in the growth of or bring into being.

Innovative Growth-Oriented—utilizing new concepts or ideas to induce or sustain growth.

Manufacturing Establishment—for the purposes of receiving benefits under this program shall mean those engaged in the mechanical or chemical transformation of materials or substances into new products, or assembling component parts if the finished product is neither a structure nor other fixed improvement.

Park Area—the area included in any *research* and development park which is operated in association with a public or regionally accredited independent university in the state.

Park Developer—person(s) or entity responsible for preparing the park area for use.

Program—the Louisiana University Research and Development Parks Program.

Research—a scientific or scholarly investigation process.

Technology—the application of science, especially to industrial or commercial objectives and the whole body of methods and materials used to achieve such objectives.

University Research and Development Park—includes nonprofit or for-profit research and development parks that have established a relationship with a university or are part of a university. The relationship may be a contractual one including joint ventures or actual operation of a research and development park by a university, or it may take the shape of a formal operational relationship including cooperative or sponsored ventures between a research park and university. A University Research and Development Park shall have:

- a. existing or planned land and buildings primarily designed for private and public research and development facilities, technology driven and science-based companies relating to manufacturing, assembly, or support services;
- b. a contractual and/or operational relationship(s) with a university or other institution of higher education;
- c. a role in promoting research and development by the university in partnership with industry, assisting in the growth of new ventures, and promoting economic development;
- d. a role in aiding the transfer of technology and business skills between the university and industry tenants;
- e. a resolution from the affiliated university describing its participation in the program.

B. Park developer must submit a resolution to the Office of Commerce and Industry as soon as a park has been established. The resolution must give the following information:

1. specific location and boundaries of the park;
2. documentation of university affiliation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:631 (April 2000).

§1505. Criteria

A. To qualify for the Louisiana University Research and Development Parks Program tax incentives an applicant must be a *concern*, as defined in §1503.A, must provide documentation evidencing its location in a University Research and Development Park, must document its association with a Louisiana public or regionally accredited independent university, and must demonstrate, by written statement, its viability to contribute to the improved scientific information and technology available to the citizens of Louisiana and its ability, through improved economic conditions, to stimulate the creation of jobs and the development of the park area. The statement should include all factors which are relevant to the continued and expanded operations of the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1506. Resolution from Local Governmental Subdivision

A. The local governmental authority must file with the Board of Commerce and Industry a resolution for each park located within the jurisdiction of its political subdivision, adopted by the governing authority, which provides for participation by that governmental subdivision in the program. The resolution by the local governing authority shall authorize the Board of Commerce and Industry to grant rebates and/or exemptions on eligible sales taxes of the local political subdivision as outlined in this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1507. Filing of Applications

Editor's Note: Applications must be filed now at the following address:

Office of Business Development Services
Box 94185
Baton Rouge, LA 70804-9185

A. An advance notification of intent to file an application for the Louisiana University Research and Development Parks tax incentives shall be filed prior to the beginning of construction, acquisition of equipment, or occupation of existing facilities. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form. Any purchases made prior to the filing of the advance notification may not be eligible for exemption and/or credit.

Applications must be filed with the Office of Commerce and Industry, P.O. Box 94185, Baton Rouge, LA 70804-9185 on the prescribed form, along with any required additional information, within six months after the beginning of construction or three months before completion of construction or the beginning of operations, whichever occurs later.

B. An application must be submitted to the Office of Commerce and Industry at least 60 days prior to the Board of Commerce and Industry meeting where it will be heard. An application fee shall be submitted with the application based on 0.2 percent of the estimated total amount of taxes to be rebated, exempted, or credited. In no case shall an application fee be smaller than \$200 and in no case shall a fee exceed \$5,000 per project. A fee of \$50 shall be charged for the renewal of a contract. An estimated five-year income and franchise tax liability must be provided to the Board of Commerce and Industry. This information will be requested on the application form and is to be used to estimate the economic impact of the project to the state.

C. A copy of any application requesting rebate of and/or exemption from taxes of any political subdivision shall be transmitted by the applicant to the governing authority of each political subdivision levying any such taxes. Rebates made by local governing subdivisions may include all of those sales taxes that are not dedicated to the repayment of bonded indebtedness.

D. Within six months after construction has been completed, the applicant from the establishment shall file, on the prescribed form, an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry. Upon request by the Office of Commerce and Industry, a map showing the location of all facilities claiming exemptions in the project will be submitted in order that the property for which rebates are claimed may be clearly identified.

E. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemptions or the fee submitted is incorrect. The document may be resubmitted with the correct fee and/or information. Documents will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees for advance notifications, applications, renewals, or affidavits of final cost which have been accepted, will not be refundable.

F. The applicant proposing a project with a construction period greater than two years must file a separate application for each construction phase. An application fee shall be submitted with each application filed, based on the fee schedule in §1507.B above.

G. The Office of Commerce and Industry is authorized to grant a six-month extension for filing of the application. An authorized representative of the Board of Commerce and Industry must approve a further extension. All requests for extension must be in writing and must state why the extension is requested.

H. In addition to the information contained in the application, the applicant shall make available any additional relevant information pertinent to the application that the Secretary of the Department of Economic Development or the Board of Commerce and Industry may request.

I. Please make checks payable to: Louisiana Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:632 (April 2000).

§1509. Recommendations of the Secretaries of Economic Development and Revenue

A. The Office of Commerce and Industry shall forward the application with its recommendations to the Secretary of Economic Development and the Secretary of Revenue for their review. Within 30 days after the receipt of the application the secretaries of Economic Development and Revenue shall submit their recommendations (the Secretary of Revenue shall submit a Letter of No Objection in lieu of a letter of recommendation) in writing to the assistant secretary of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1511. Application Shall Be Presented to the Board of Commerce and Industry

A. The Office of Commerce and Industry shall present an agenda of applications to the Board of Commerce and Industry with the written recommendations of the secretaries of Economic Development and Revenue, an endorsement resolution of the local taxing authorities, and shall make recommendations to the board based upon its findings.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1513. Contract Approvals

A. The Board of Commerce and Industry, after acting on the application, shall forward its recommendation, together with all supporting documentation and the recommendations of the Department of Economic Development and the Department of Revenue, to the governor and the Joint Legislative Committee on the Budget. When the governor and Joint Legislative Committee on the Budget find that a concern satisfies the requirements of the law and these rules, they shall advise the Board of Commerce and Industry that it may enter into a contract with such a concern providing for tax rebates, exemptions, and/or credits as allowed by R.S. 17:3389. The contract shall be under the terms and conditions as deemed to be in the best interest of the state. A copy of the contract shall be forwarded to the Department of Revenue, to the local governmental subdivision's tax authority, and the tax collecting officer or agency.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1515. Tax Incentives Available under Contract

A. Tax exemptions may be granted for any of the following:

1. state corporate franchise tax;
2. state corporate income tax;
3. any other tax imposed directly by the state on the applicant.

B. The contract will not authorize the applicant to make tax-free purchases from vendors. Rebates of taxes paid may be granted for any of the following:

1. sales and use taxes imposed by the state or local governmental subdivisions on:
 - a. machinery and equipment used by the applicant;
 - b. materials and building supplies used in the repair, reconstruction, modification, or construction of a plant or facility;
 - c. a tax credit may be granted against the tax liability due to the state for the corporate income tax and the corporate franchise tax, provided however, that such credit shall not exceed the cost of purchase by the concern of machinery and scientific equipment used on the premises of the concern located in the park area;
 - d. materials and supplies necessary for or used in the manufacturing or assembly of the applicant's product, or delivery of services but not on goods or materials that become an integral part of the product or process;
 - e. any other goods and services used or consumed by the applicant's facility in the park.

C. State sales and use tax rebates shall be filed according to official Department of Revenue procedures.

D. Local sales and use tax rebates shall be filed in the manner prescribed by the local governmental subdivision taxing authority.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1516. Tax Relief Granted

A. The amount of state tax rebates and/or exemptions granted to a concern may be a maximum of 30 percent of the tax liability for state corporate franchise, income, and state sales and use taxes of the concern during the fiscal year preceding the fiscal year for which the rebates and/or exemptions are granted, or the amount established by contract. In the case of companies that have no prior fiscal year, the first fiscal year will be used.

B. The amount of the local governmental subdivision tax rebates granted to a concern may be a maximum of 100 percent of the tax liability for sales taxes due to that local governmental subdivision by the concern during the fiscal year preceding the fiscal year for which the rebates are granted, or the amount established by contract. In the case of companies that have no prior fiscal year, the first fiscal year will be used.

C. Companies are eligible to receive tax benefits, under this Chapter, for only facilities located within the park.

D. Tax rebates are available for machinery and equipment when used inside the park by the applicant for research or in the manufacturing, assembly of a product, or delivery of a service. Machinery and equipment shall not be leased, rented, moved, or used, outside the physical premises of the concern receiving the tax benefits.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:633 (April 2000).

§1517. Violations of Rules, Statutes, or Documents

A. On the initiative of the Board of Commerce and Industry or whenever a written complaint of violation of the terms of the rules, the contract documents or the statutes is received, the assistant secretary for the Office of Commerce and Industry shall cause to be made a full investigation on behalf of the board, and shall have full authority for such investigation including, but not exclusively, authority to call for reports or pertinent records or other information from the contractors. If the investigation substantiates a violation, the assistant secretary may present the subject contract to the board for formal cancellation. The businesses with contracts shall then remit any and all taxes that would have been imposed but for the issuance of a contract. If the contract is canceled, the Board of Commerce and Industry shall notify the Department of Revenue, the local governmental subdivision and the agency collecting the local taxes, of the cancellation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1518. Contract Renewals

A. The initial contract may be entered into for a period up to a maximum of five years under such terms and conditions the board deems to be in the best interest of the state. Each contract may be renewed for a period of up to five years, provided that the total number of years of a contract shall not exceed 10 years, the terms and conditions of which shall be deemed in the best interest of the state. Any renewal contract shall become effective only if the local governmental subdivision levying the tax approves of the renewal prior to the action by the Board of Commerce and Industry to renew the contract. The applicant shall receive and submit the approval of the local governmental subdivision to the Board of Commerce and Industry along with the request for a contract renewal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1519. Annual Review

A. On February 15, of each year, the contractee shall file an affidavit with the Office of Commerce and Industry certifying that the business still qualifies under §1505. If the affidavit shows the company no longer qualifies under this rule, the Board of Commerce and Industry shall cancel the contract and no further rebates or credits will be granted. The Department of Economic Development will notify the Department of Revenue within 30 days after revocation of a contract. On February 15, of each year, the contractee shall provide the Department of Economic Development with a copy of its most recent research and development report from the previous year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1521. Appeals and Petition Procedures

A. Applicants who wish to appeal the action of the Board of Commerce and Industry must submit their appeals along with any necessary documentation to the Office of Commerce and Industry at least 30 days prior to the meeting of the screening committee of the Board of Commerce and Industry during which their appeals will be heard.

B. Petitions, and all documentation, on matters not yet presented to or ruled on, by the board, must be submitted to the board's staff at least 30 days prior to the meeting of the board in which the petition will be made.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1525. Hearing Procedures

A. Applicants and/or their representatives will be notified of the date of the Board of Commerce and Industry meeting at which their application will be considered. The applicant should have a representative present who is able to answer any questions the Board of Commerce and Industry may have about the information contained in the application. In the event there is not a representative present, the application may be deferred.

B. The local governing authority of the political subdivision levying taxes within the park shall be notified of the date of the Board of Commerce and Industry meeting at which any application for benefits under this Program will be considered.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

§1527. Contract Execution Procedures

A. When an application is approved, a contract is supplied to the applicant by the Office of Commerce and Industry. The applicant must execute the contract and return it within 30 days of receipt. Certified copies will then be forwarded to the proper local governmental taxing authority and to the Department of Revenue.

B. The taxing authorities of the local governmental subdivision issuing an endorsement resolution should be contacted by the applicant to determine their procedure for rebating their sales/use tax.

C. Applicants will be contacted by the staff of the Department of Revenue who will advise the proper procedures to follow in order to obtain the state sale/use tax rebate.

D. Notification of any change which may affect the contract should be made to the Office of Commerce and Industry. This includes any changes in the ownership or operational name of the firm holding a contract or the abandonment of operation. Failure to report can constitute a breach of contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 17:3389.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Division of Business Incentives LR 26:634 (April 2000).

Chapter 17. Industry Assistance Program

§1701. Use of Louisiana Contractors, Labor and Supplies

A. The Board of Commerce and Industry requires manufacturers and their contractors to give preference and priority to Louisiana manufacturers and in the absence of Louisiana manufacturers, to Louisiana suppliers, engineers, contractors and labor except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies and equipment manufactured in Louisiana, or, in the absence of Louisiana manufacturers, sold by Louisiana residents, and to the use of Louisiana residents, and to the use of Louisiana engineers, contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the manufacturers receiving exemptions to favor Louisiana manufacturers, suppliers, contractors and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1703. Qualifications

A. To qualify for the exemption, the applicant must be a manufacturer with Louisiana manufacturing plants which are currently in operation. The applicant must be able to demonstrate to the board's satisfaction that with the aid of the exemption they will remain a viable company that will continue to grow and prosper in Louisiana. The applicant will not be eligible for this program if the manufacturing establishment has been assessed two or more criminal penalties, pursuant to R.S. 30:1073, (environmental violations) within 24 months preceding the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1705. How to Apply

Editor's Note: Applications must be filed now at the following address:

Office of Business Development Services
Box 94185
Baton Rouge, LA 70804-9185

A. An "Advance Notification" of intent to file for Industry Assistance shall be filed by the company at least 90 days prior to filing an application. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. Application to the Board of Commerce and Industry for the Industry Assistance Program must be filed with the Office of Commerce and Industry, Box 94185, Baton Rouge, LA 70804-9185 on the form prescribed, along with the required additional information.

C.1. An application fee shall be submitted with the application based on the following range of taxes estimated to be exempted.

Fee Amount	Range of Taxes to be Exempted
\$200	\$1 to \$15,000
\$300	\$15,001 to \$50,000
\$400	\$50,001 to \$150,000
\$500	over \$150,000

2. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

D. Application must be accompanied by five years of comprehensive financial statements, prepared in accordance with generally accepted accounting principles, and which contains relevant information that will support the application justification. The justification should refer to qualitative as well as quantitative information contained in the financial statements which can materially demonstrate

the need for the program benefits, and the resulting cost/impact benefits to the state. Qualitative information should provide explanation about: economic resources, the sources of prospective cash inflows; obligations to transfer economic resources to others, the causes of prospective cash outflows; and earnings, the financial results of operations and other events and conditions that affect the enterprise.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986).

§1707. Additional Information May Be Required

A. In addition to the information contained in the application, the applicant shall make available any additional information and records the Secretary of Commerce or the Board of Commerce and Industry may request.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1709. Public Hearings

A. The Industrial Assistance Review Committee of the Board of Commerce and Industry shall conduct public hearings on any application for exemption. The Secretary of Commerce shall present his recommendations to the committee. After due consideration to all facts and testimony, the Industrial Assistance Review Committee shall make its recommendations to the full Board of Commerce and Industry at its next regular meeting.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1711. Requirements for Exemption

A. The Secretary of Commerce, the Board of Commerce and Industry, the Governor and the Joint Legislative Committee of the Budget may consider any and all factors which are relevant to the continued operations of the applicant. These should include, but not be limited to, the following.

1. The benefits to the state in terms of continued employment opportunities, payroll, expenditures for goods and services, contributions to the revenue base of the state and local governments and the creation of new and additional permanent jobs.

2. Competitive conditions existing in other states or in foreign nations.

3. The economic viability of the applicant and the effect of any tax exemption on economic viability.

4. The effects on applicants of the temporary supply and demand conditions.

5. The effects of casualties and/or natural disasters.
6. The effects of United States and foreign trade policies.
7. The effect of federal laws and regulations bearing on the economic viability of the applicant within the state.
8. The competitive effect of like or similar exemptions granted to other applicants.
9. The record of civil violations of the applicant pursuant to R.S. 30:1073 (environmental violations).

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1713. Approval of the Joint Legislative Committee of the Budget and the Governor

A. The Board of Commerce and Industry, after acting on the application, shall forward its recommendations together with all supporting documents and the recommendations of the Department of Commerce to the governor and the Joint Legislative Committee of the Budget the assessor of the parish in which the plant is located, each member of the legislature, and the governing authority of each political subdivision as required by the statute. Whenever the governor and the Joint Legislative Committee of the Budget finds that a manufacturing establishment satisfies the requirements of the law, they shall advise the Board of Commerce and Industry that it may, subject to any restrictions imposed by the governor or the Joint Legislative Committee of the Budget, enter into a contract with such establishment exempting it from taxation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1715. Taxes to be Exempt

A. Unless the Board of Commerce and Industry recommends, and unless the Joint Legislative Committee of the Budget approves otherwise, the tax to be exempt will be used in the following order:

1. the corporation franchise tax;
2. sales and use taxes imposed by the state on any goods, services, material and supplies necessary for or used in manufacturing or production of a product or consumed by the applicant;
3. sales and use taxes imposed by the state on machinery and equipment to be used by the applicant, or materials and building supplies, whether purchased directly or through a contractor, to be used in the repair, reconstruction, modification or construction of plant and facilities;
4. the corporation income tax;
5. any other taxes imposed directly by the state on the applicant.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:944 (October 1985).

§1717. Limits to Amount of Tax Exemption

A. The total amount of tax exemptions that can be granted to any single applicant cannot exceed 5 percent of the available amount for tax exemptions under this program for any fiscal year except when upon further recommendation of the board and approval of the Joint Legislative Committee of the Budget and the governor it can be clearly demonstrated that an additional amount not to exceed 5 percent of the available amount, can materially improve the viability and stability of the applicant's operation in Louisiana. There will also be a maximum amount of tax exempted during any year of each contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985).

§1719. Contract Subject to Annual Audit and Review

A. The contractee will be subject to an annual audit by the Finance Division of the Office of Commerce and Industry. The company will receive notice of the annual review 45 days in advance. A review fee of \$100 must be returned and received 15 days prior to the appointment date of the annual review. The contract will be reviewed annually by both the Board of Commerce and Industry and the Joint Legislative Committee of the Budget. Should the audit or review uncover a violation of the contract, the Board of Commerce and Industry, with the approval of the governor and the Joint Legislative Committee of the Budget, shall give notice, thereof, in writing, and unless the violation is corrected within 90 days, any remaining portion of the exemption from taxation granted under any contract entered into under this statute may be canceled. The contract may also be canceled if the contractee can no longer demonstrate a need for the exemption.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985), amended by the Department of Commerce, Office of Commerce and Industry, LR 12:663 (October 1986).

§1721. Renewing the Contract

A. The initial contract can be entered into for any period not exceeding five years. Each contract may be renewed for periods of up to five years providing that the contractee can show that it is in the best interest of the state of Louisiana to extend the contract. The renewal must be recommended by the Department of Commerce, the Board of Commerce and Industry and approved by the Joint Legislative Committee of the budget and the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4301-4306.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, Finance Division, LR 11:945 (October 1985).

§1725. Minority Set-Aside

A. Any new manufacturing establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to certified minority owned businesses an amount not less than 10 percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such certified minority-owned businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Minority and Women's Business Enterprise (the "division") to purchase the "Directory of Certified minority-owned businesses" for use in identifying qualified, certified minority-owned businesses.

C. Each affected manufacturing establishment shall submit to the division, at the time of submitting an application for tax equalization to the Office of Commerce and Industry, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each manufacturing establishment shall include the following:

a. an affirmation that the establishment is committed to giving preference and priority to Louisiana businesses and to compliance with the intent of the minority set-aside statutes and rules;

b. the methods it will use to:

i. encourage certified minority business participation;

ii. keep records of certified minority business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with certified minority businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from a certified minority business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by a certified minority business in a timely manner; or

iii. cannot be performed by a certified minority-owned business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Subparagraphs D.1.c and d of this rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the Secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the minority set-aside statutes and rules, the secretary of economic development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the minority set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:4306; R.S. 39:1956.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

Chapter 19. Industrial Tax Equalization Program

§1901. General

A. Intent of Law. For qualifying manufacturers, the Board of Commerce and Industry may enter into a contract to equalize the total tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The Industrial Tax Equalization Program is an inducement to attract new manufacturing facilities to Louisiana, which would not otherwise locate in Louisiana due to a higher tax burden. This program is designed to eliminate the tax differential through the equalization of the overall taxes between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed manufacturing operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989).

§1903. Louisiana Manufacturers and Suppliers

A. The Board of Commerce and Industry requires manufacturers and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies, and equipment manufactured in Louisiana, or in the absence of Louisiana manufacturers, sold by Louisiana residents, and the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the manufacturers receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989).

§1905. Minority Set-Aside

A. Any new manufacturing establishment, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to certified minority-owned businesses an amount not less than 10 percent of the value of the anticipated total procurement of goods and services including construction for the exempted project, without added expense; provided such certified minority-owned businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Minority and Women's Business Enterprise (the "division") to purchase the "Directory of Certified minority-owned businesses" for use in identifying qualified, certified minority-owned businesses.

C. Each affected manufacturing establishment shall submit to the division, at the time of submitting an application for tax equalization to the Office of Commerce and Industry, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each manufacturing establishment shall include the following:

a. an affirmation that the establishment is committed to giving preference and priority to Louisiana businesses and to compliance with the intent of the minority set-aside statutes and rules;

b. the methods it will use to:

i. encourage certified minority business participation;

ii. keep records of certified minority business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with certified minority businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from a certified minority business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by a certified minority business in a timely manner; or

iii. cannot be performed by a certified minority-owned business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective. The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous projections were reported under Subparagraphs D.1.c and d of this rule.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the Secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the minority set-aside statutes and rules, the Secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the minority set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1046 (December 1989).

§1907. Eligibility for Submission of Application

A. The applicant for tax equalization must be a corporation.

B. The sites under consideration must be valid and viable for the proposed manufacturing operations.

C. A new manufacturing establishment at the time it is locating in Louisiana, must either be located in another state or be contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which such establishment is locating.

D. The state in which the new establishment is located or is contemplating locating must have a state, parish (county) and local taxing structure which offers a greater tax advantage to such establishment than does the taxing structure of Louisiana.

E. The Secretary of Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989).

§1909. Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989).

§1911. Application Procedure

A. Prior to the formal plant announcement, an "Advance Notification" of intent to file for Industrial Tax Equalization must be filed with the Office of Commerce and Industry. The company will submit, on forms provided by the Office of Commerce and Industry, a comparison of taxes for all sites under consideration.

B. The Secretary of the Department of Economic Development, after favorable review of the advance notification shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Commerce and Industry, may be filed with the Office of Commerce and Industry. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Commerce and Industry. All Commerce and Industry Board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Board of Tax Appeals.

E. Upon receipt of any such recommendation the Board of Tax Appeals shall notify the Department of Revenue and Taxation of said recommendation and shall make available to the Department of Revenue and Taxation the application and all supporting documents.

F. The Department of Revenue and Taxation shall within 10 days after receipt of the notice file in writing with the Board of Tax Appeals any objections it has to granting the exemption.

G. The Board of Commerce and Industry, after review by the Board of Tax Appeals and with the approval of the governor, may enter into a contract of tax equalization with the new manufacturing establishment.

H. All information submitted will be held in confidence to the fullest extent permitted by the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1047 (December 1989).

§1913. Application Contents

A. The application shall be submitted on forms provided by the Office of Commerce and Industry. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information.

1. The chief financial officer of the applicant company requesting tax equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

- a. plant construction cost;
- b. annual labor cost;
- c. annual raw materials cost;
- d. annual transportation cost;
- e. annual power cost; and
- f. site cost.

B. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

1. State Sales/Use Tax;
2. State Corporate Income Tax;
3. State Corporate Franchise Tax;
4. State Ad Valorem Property Tax (where applicable);
5. State Inventory Tax (where applicable); and
6. any other state taxes.

C. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

1. Local Sales/Use Tax;
2. Local Ad Valorem Property Tax;
3. Local Inventory Tax; and
4. any other local taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989).

§1915. Yearly Determination of Tax Equalization Amount

A. The contract of tax equalization shall, on an annual basis, effect equality in amount between the taxes payable in Louisiana and the taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana Corporate Income and Franchise Tax return, the contractee shall furnish to the Department of Revenue and Taxation and the Department of Economic Development, the following, where applicable, on an annual basis:

1. a taxable year compilation of what would have been the state and local sales and use taxes, including any applicable tax incentives, of the contractee had it located in the competing state, together with a compilation of the actual Louisiana state and local sales and use taxes paid for the contractee's taxable year;

2. using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state;

3. all other state and local returns or tax payment information, including any applicable tax incentives, for the contractee's taxable year which would have been filed or paid by the contractee had the contractee located in the competing state; and

4. all other tax returns, including any applicable incentives, filed in the state of Louisiana with other state agencies or local governments.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue and Taxation.

C. The data reflecting the tax burden, including any available tax incentives, which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent certified public accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue and Taxation shall compute the total tax liability of the contractee in Louisiana and the total tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Commerce and Industry will assist the Department of Revenue and Taxation should any audit of the tax data for the competing state be necessary.

E. If the total tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the total tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

F. Exemptions from taxation shall be granted in the following priority:

1. state sales and use taxes on machinery and equipment to be used in the manufacturing process;
2. state corporation franchise tax;
3. state corporation income tax;
4. state sales and use taxes on materials and supplies required in the manufacture or production of a product;
5. any other tax imposed by the state of Louisiana to which the applicant is subject.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1048 (December 1989).

§1917. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Commerce and Industry, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the Project Completion Report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

§1919. Affidavit of Final Cost

A. Within six months after completion of construction or the Purchase of facility, the owner of the new manufacturing establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the plant inspection which will be conducted by the Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

§1921. Contract Renewals

A. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in §2313 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

§1923. Annual Review/Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have 90 days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

§1925. Environmental Report Requirement

A. Any new commercial manufacturing establishment, the primary business of which is the commercial treatment, disposal, or destruction of hazardous waste generated outside Louisiana, shall submit with the application:

1. information relative to the impact the new manufacturing establishment will have on the environment;

2. a history of the compliance with environmental laws in Louisiana or any other state in which the applicant has operated. The history will include a list of any citations issued by any federal, state or local agency charged with the enforcement of any law concerning the environment or the transportation, treatment, disposal or destruction of hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1049 (December 1989).

Chapter 21. Tax Equalization for Manufacturing Facilities

§2101. Foreword

A. Act 12 is meant to be an Inducement to attract new manufacturing facilities to Louisiana which might not ordinarily locate here due to a higher tax burden. The Act is designed to reduce or eliminate this tax differential through the equalization of the overall tax picture between a Louisiana site and a competing site in another state. A prerequisite is that the sites under consideration be valid and viable for the proposed manufacturing operations.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2103. Eligibility

A. To be eligible for consideration under Act 12 a manufacturing operation must be new to the state or have the written approval of competitors to apply for consideration under the Act. The Standard Industrial Classification codes will be used to determine if an industry is new to the state or requires competitors' approval. The board shall take the number of jobs to be created into consideration in making its recommendation to the Tax Commission.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2105. Certification of Sites

A. The chief financial officer of the applicant company requesting tax equalization under Act 12 must certify in writing the following estimated costs for each site under consideration:

1. plant construction cost;
2. annual labor cost;
3. annual raw materials cost;
4. annual transportation cost;
5. annual power cost; and
6. site cost.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2107. Certification of Taxes

A. A certified estimate of the following state taxes covering the first five years of operations (including the construction period) must be filed for each site under consideration:

1. state sales/use tax;
2. state corporate income tax;
3. state corporate franchise tax;
4. state ad valorem property tax; and
5. state inventory tax.

B. Additional applicable state taxes must be included and comparable information is to be listed for all proposed sites.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2109. Certification of Local Taxes

A. A certified estimate of the following local taxes covering the first five years of operations (including construction period) must be filed for each site under consideration:

1. local sales/use tax;
2. local ad valorem property tax; and
3. local inventory tax.

B. Additional applicable local taxes must be included and comparable information is to be listed for all proposed sites.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2111. Contract Period

A. Maximum length of time for a given contract is five years (including construction period). However, one additional five-year contract can be negotiated for a total of 10 years.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2113. Method of Computation

A. Total Louisiana taxes (state and local) shall be computed for a period of five years (including construction period) and compared to the total taxes for the similar period for the competing sites. If the Louisiana site is at a total tax disadvantage, then the appropriate Louisiana taxes will be adjusted to eliminate this difference in the shortest practical time.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2115. Contract Renewals

A. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five year contract period shall file with the board secretary the information required in rules three and four regarding certification of taxes.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2117. Board Action on Applications

A. All board action on applications will be made at regularly scheduled board meetings.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

§2119. Violation of Contract

A. The Board of Commerce and Industry or its designated representative shall verify all items filed by the applicant company. On the board's initiative, or whenever any written complaint or violation of terms of the contract is received, the board shall cause to be made a full investigation on its behalf. If the investigation substantiates a violation, the board may formally request of the Louisiana Tax Commission termination of the contract.

AUTHORITY NOTE: Promulgated in accordance with Acts 1966, 1st Ex. Sess., No. 12.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, June 1973.

Chapter 23. Tax Equalization for New Corporate Headquarters

§2301. General

A. Intent of Law. For qualifying new corporate headquarters, the Board of Commerce and Industry may enter into a contract to equalize the franchise tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The Corporate Headquarters Tax Equalization Program is an inducement to attract new corporate headquarters facilities to Louisiana, which would not otherwise locate in Louisiana due to a higher tax burden. This program is designed to eliminate the franchise tax differential between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed new corporate headquarters operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989).

§2303. Louisiana Manufacturers and Suppliers

A. The Board of Commerce and Industry requires any new corporate headquarters and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies, and equipment manufactured in Louisiana, or in the absence of Louisiana manufacturers, sold by Louisiana residents, and the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the new corporate headquarters receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989).

§2305. Minority Set-Aside

A. Any new corporate headquarters, and its contractors, applying for an exemption or state-sponsored subsidy shall designate and set-aside for awarding to certified minority-owned businesses an amount not less than 10 percent of the value of the anticipated total procurement of goods and

services including construction for the exempted project, without added expense; provided such certified minority-owned businesses are majority-owned by Louisiana residents, operated by Louisiana residents and are competent to deliver the required products and services in a timely manner and perform the required work in a timely manner during construction and operation of the project.

B. The applicant should contact the Division of Minority and Women's Business Enterprise (the "division") to purchase the "Directory of Certified Minority-Owned Businesses" for use in identifying qualified, certified minority-owned businesses.

C. Each affected corporate headquarters shall submit to the division, at the time of submitting an application for tax equalization to the Office of Commerce and Industry, and annually thereafter, its plan for compliance.

D. The Set-Aside Plan for Compliance

1. The set-aside plan for compliance prepared by each corporate headquarters shall include the following:

a. an affirmation that the establishment is committed to giving preference and priority to Louisiana businesses and to compliance with the intent of the minority set-aside statutes and rules;

b. the methods it will use to:

i. encourage certified minority business participation;

ii. keep records of certified minority business participation;

iii. require compliance by its bidders, contractors, and subcontractors for their contracts with certified minority businesses;

c. on forms provided by the division, the annual anticipated expenditures for construction, machinery and equipment, cost of goods used in manufacturing, operating expenditures, and all other expenditures;

d. on the same forms, those products and services which the establishment believes:

i. cannot be purchased from a certified minority business without added expense, or can only be purchased from an out-of-state source, or which must be purchased from a sole-source provider;

ii. cannot be delivered by a certified minority business in a timely manner; or

iii. cannot be performed by a certified minority-owned business in a timely manner.

2. All exceptions must be separately listed on an attachment with a brief explanation of why each is considered an exclusion.

E. The establishment will submit annually a report on its compliance for the previous year, within 90 days following the end of its operating year, or within 90 days of the anniversary date on which the contract became effective.

The annual compliance report, on forms provided by the division, shall contain the actual expenditures and exceptions for which previous protections were reported under Subparagraphs D.1.c and d.

F. On an annual basis and within 12 months of the end of the establishment's operating year or contract anniversary date, the division shall report to the Secretary of Economic Development, regarding the status of the establishment's compliance efforts.

G. Within 12 months of the end of the establishment's operating year or contract anniversary date, if it is determined that an establishment has not given preference and priority to Louisiana businesses and/or is not in compliance with the minority set-aside statutes and rules, the Secretary of Economic Development may recommend to the Board of Commerce and Industry that a proportionate reduction of the next annual exemption amount be made.

H. Documents and other materials submitted by Louisiana businesses for purposes of compliance with the minority set-aside statutes and rules shall be held in confidence and shall not be made public record, if the company determines that such records are trade or business secrets, and shall be maintained in a secured environment by the division.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1043 (December 1989).

§2307. Eligibility for Submission of Application

A. The applicant for tax equalization must be a corporation.

B. The sites under consideration must be valid and viable for the proposed new corporate headquarters operations.

C. A new corporate headquarters establishment at the time it is locating in Louisiana, must either be located in another state or be contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which such establishment is locating.

D. The state in which the new establishment is located or is contemplating locating must have a state, franchise tax which offers a greater tax advantage to such establishment than does the franchise tax of Louisiana.

E. The Secretary of Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

G. To be eligible for consideration under this program, the corporate headquarters facility must be new to the state or have the written approval of its competitors in order to apply for consideration for this program. The Standard Industrial Classification codes will be used to determine the competitive industries.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989).

§2309. Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5,000 per project. A fee of \$50 shall be charged for the renewal of a contract.

C. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989).

§2311. Application Procedure

A. Prior to the formal announcement to locate in Louisiana, an "Advance Notification" of intent to file for the New Corporate Headquarters Tax Equalization must be filed with the Office of Commerce and Industry. The company will submit, on forms provided by the Office of Commerce and Industry, a comparison of taxes for all sites under consideration.

B. The Secretary of Department of Economic Development, after favorable review of the Advance Notification, shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Commerce and Industry, may be filed with the Office of Commerce and Industry. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Commerce and Industry. All commerce and industry board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Board of Tax Appeals.

E. Upon receipt of any such recommendation the Board of Tax Appeals shall notify the Department of Revenue and Taxation of said recommendation and shall make available to the Department of Revenue and Taxation the application and all supporting documents.

F. The Department of Revenue and Taxation shall within 10 days after receipt of the notice file in writing with the Board of Tax Appeals any objections it has to granting the exemption.

G. The Board of Commerce and Industry, after review by the Board of Tax Appeals and with the approval of the governor, may enter into a contract of tax equalization with the new corporate headquarters establishment.

H. All information submitted will be held in confidence to the fullest extent permitted by the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1044 (December 1989).

§2313. Application Contents

A. The application shall be submitted on forms provided by the Office of Commerce and Industry. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information.

1. The chief financial officer of the applicant company requesting New Corporate Headquarters Tax Equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

- a. construction cost;
- b. site cost.

2. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

- a. state sales/use tax;
- b. state corporate income tax;
- c. state corporate franchise tax;
- d. state ad valorem property tax (where applicable);
- e. state inventory tax (where applicable);
- f. any other state taxes.

3. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

- a. local sales/use tax;
- b. local ad valorem property tax;
- c. local inventory tax; and
- d. any other local taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2315. Yearly Determination of Tax Equalization Amount

A. The contract of franchise tax equalization shall, on an annual basis, effect equality in amount between the franchise taxes payable in Louisiana and the franchise taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana Corporate Income and Franchise Tax return, the contractee shall furnish, to the Department of Revenue and Taxation and the Department of Economic Development, the following, where applicable, on an annual basis. Using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue and Taxation.

C. The data reflecting the franchise tax burden, including any available tax incentives, which would have been incurred in the competing state shall be compiled on behalf of the contractee by an independent Certified Public Accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue and Taxation shall compute the franchise tax liability of the contractee in Louisiana and the franchise tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Commerce and Industry will assist the Department of Revenue and Taxation should any audit of the tax data for the competing state be necessary.

E. If the franchise tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the franchise tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana franchise tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2317. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Commerce and Industry, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year franchise tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the Project Completion Report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2319. Affidavit of Final Cost

A. Within six months after completion of construction or the purchase of facility, the owner of the new corporate headquarters establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the facility inspection which will be conducted by the Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2321. Contract Renewals

A. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in Rule 6 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1045 (December 1989).

§2323. Annual Review/Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have 90 days within which to correct the violations. If the violation is not corrected within 90 days, any remaining

portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office Of Commerce and Industry, Finance Division, LR 15:1046 (December 1989).

§2325. Environmental Report Requirement

A. Any new corporate headquarters establishment, the primary business of which is the commercial treatment, disposal, or destruction of hazardous waste generated outside Louisiana, shall submit with the application:

1. information relative to the impact the new corporate headquarters establishment will have on the environment;

2. a history of the compliance with environmental laws in Louisiana or any other state in which the applicant has operated. The history will include a list of any citations issued by any federal, state or local agency charged with the enforcement of any law concerning the environment or the transportation, treatment, disposal or destruction of hazardous waste.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, Finance Division, LR 15:1046 (December 1989).

Chapter 25. Tax Equalization for New Warehousing and Distribution Establishments

§2501. General

A. Intent of Law. For qualifying new warehousing and distribution establishments, the Board of Commerce and Industry may enter into a contract to equalize the total tax burden in Louisiana to that of a competing site located in another state.

B. Description of the Program. The new warehousing and distribution tax equalization program is an inducement to attract new warehousing and distribution facilities to Louisiana, which would not otherwise locate in Louisiana due to a higher tax burden. This program is designed to eliminate the tax differential through the equalization of the overall taxes between a Louisiana site and a competing site in another state. The sites under consideration must be valid and viable for the proposed new warehousing and distribution operations. The competing site must offer comparative advantages equal to or greater than the comparative advantages offered at the Louisiana site. The governor must extend a written invitation to the company authorizing the company to submit an application for this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989).

§2503. Louisiana Manufacturers and Suppliers

A. The Board of Commerce and Industry requires new warehousing and distribution establishments and their contractors to give preference and priority to Louisiana manufacturers and, in the absence of Louisiana manufacturers, to Louisiana suppliers, contractors, and labor, except where not reasonably possible to do so without added expense or substantial inconvenience or sacrifice in operational efficiency. In considering applications for tax exemption, special attention will be given to those applicants agreeing to use, purchase and contract for machinery, supplies, and equipment manufactured in Louisiana. Or in the absence of Louisiana manufacturers, sold by Louisiana residents, and the use of Louisiana contractors and labor in the construction and operation of proposed tax exempt facilities. It is a legal and moral obligation of the new warehousing and distribution establishments receiving exemptions to favor Louisiana manufacturers, suppliers, contractors, and labor, all other factors being equal.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989).

§2505. Reserved.**§2507. Eligibility for Submission of Application**

A. The applicant for new warehousing and distribution tax equalization must be a corporation.

B. The sites under consideration must be valid and viable for the proposed new warehousing and distribution operations.

C. A new warehousing and distribution establishment at the time it is locating in Louisiana must either be located in another state or be contemplating locating in another state which has equivalent or comparable advantages as exist at the particular area in Louisiana at which such establishment is locating.

D. The state in which the new warehousing and distribution establishment is located or is contemplating locating must have a state, parish (county) and local taxing structure which offers a greater tax advantage to such establishment than does the taxing structure of Louisiana.

E. The Secretary of Department of Economic Development must have made a recommendation to the governor to extend an invitation.

F. An invitation from the governor to apply must have been received by the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989).

§2509. Application Fees

A. An advance notification fee of \$100 shall be submitted with the prescribed advance notification form.

B. An application fee shall be submitted with the application, which fee is 0.2 percent of the estimated total amount of taxes to be exempted. In no case shall an application fee be less than \$200 and in no case shall a fee exceed \$5000 per project. A fee of \$50 shall be charged for the renewal of a contract. Please make checks payable to the Louisiana Office of Commerce and Industry.

C. The Office of Commerce and Industry reserves the right to return the advance notification, application, or affidavit of final cost to the applicant if the estimated exemption or the fee submitted is incorrect. The document may be resubmitted with the correct fee. The document will not be considered officially received and accepted until the appropriate fee is submitted. Processing fees, for advance notifications, applications, or affidavits of final cost which have been accepted, will not be refundable.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989).

§2511. Application Procedure

A. Prior to the formal announcement of the new warehousing and distribution location, an "Advance Notification" of intent to file for new warehousing and distribution tax equalization must be filed with the Office of Commerce and Industry. The company will submit, on forms provided by the Office of Commerce and Industry, a comparison of taxes for all sites under consideration.

B. The Secretary of Department of Economic Development, after favorable review of the Advance Notification, shall recommend to the governor that a written invitation to submit an application be extended to the company. The written invitation of the governor must be received before an application is submitted.

C. At the invitation of the governor an application, on forms furnished by the Office of Commerce and Industry, may be filed with the Office of Commerce and Industry. Upon staff review, the analysis and recommendation of the staff is presented to the Louisiana Board of Commerce and Industry.

D. The Board of Commerce and Industry shall review any recommendations for exemptions made by the Office of Commerce and Industry. All Commerce and Industry board action on applications will be made at regularly scheduled meetings. If the Board of Commerce and Industry concurs in the recommendation it shall forward the recommendation together with all supporting documents to the Louisiana Board of Tax Appeals.

E. Upon receipt of any such recommendation the Board of Tax Appeals shall notify the Department of Revenue and Taxation of said recommendation and shall make available to the Department of Revenue and Taxation the application and all supporting documents.

F. The Department of Revenue and Taxation shall within 10 days after receipt of the notice file in writing with the Board of Tax Appeals any objections it has to granting the exemption.

G. The Board of Commerce and Industry, after review by the Board of Tax Appeals and with the approval of the governor, may enter into a contract of tax equalization with the new warehousing and distribution establishment.

H. All information submitted will be held in confidence to the fullest extent permitted by the Public Records Law.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1055 (December 1989).

§2513. Application Contents

A. The application shall be submitted on forms provided by the Office of Commerce and Industry. A 10-year pro-forma balance sheet and income statement shall be provided by the applicant as the basis for all tax calculations. The application shall contain the following information.

1. The chief financial officer of the applicant company requesting new warehousing and distribution tax equalization under this program will submit a written certification of the following estimated costs for each site under consideration:

- a. construction cost;
- b. annual labor cost;
- c. annual transportation cost;
- d. annual power cost;
- e. site cost.

2. A certified estimate of the following state taxes covering the first 10 years of operations, filed for each site under consideration:

- a. State Sales/Use Tax;
- b. State Corporate Income Tax;
- c. State Corporate Franchise Tax;
- d. State Ad Valorem Property Tax (where applicable);
- e. State Inventory Tax (where applicable);
- f. Any other state taxes.

3. A certified estimate of the following local taxes covering the first 10 years of operations, filed for each site under consideration:

- a. Local Sales/Use Tax;
- b. Local Ad Valorem Property Tax;
- c. Local Inventory Tax;
- d. Any other local taxes.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1056 (December 1989).

§2515. Yearly Determination of Tax Equalization Amount

A. The contract for new warehousing and distribution tax equalization shall, on an annual basis, affect equality in amount between the taxes payable in Louisiana and the taxes which would have been payable in the competing state. For each taxable year of the contractee, at the time of filing the contractee's annual Louisiana Corporate Income and Franchise Tax return, the contractee shall furnish, to the Department of Revenue and Taxation and the Department of Economic Development, the following, where applicable, on an annual basis:

1. a taxable year compilation of what would have been the state and local sales and use taxes, including any applicable tax incentives, of the contractee had it located in the competing state, together with a compilation of the actual Louisiana state and local sales and use taxes paid for the contractee's taxable year;

2. using forms provided by the competing state, a computation of the corporate income tax and corporate franchise tax, including any applicable incentives, which would have been owed had the contractee located in the competing state;

3. all other state and local returns or tax payment information, including any applicable tax incentives, for the contractee's taxable year which would have been filed or paid by the contractee had the contractee located in the competing state;

4. all other tax returns, including any applicable incentives, filed in the state of Louisiana with other state agencies or local governments.

B. The contractee shall authorize the Department of Economic Development to review all tax returns of the contractee and to share the information with the Department of Revenue and Taxation.

C. The data reflecting the tax burden, including any available tax incentives, which would have been incurred in the competing state, shall be compiled on behalf of the contractee by an independent certified public accounting firm. The CPA firm shall certify to the best of its knowledge and belief that the data furnished are true and correct statements of the taxes which would have been incurred during the taxable year of the contractee had the contractee originally located in the competing state, using the same level of business activity that the contractee enjoys in Louisiana.

D. Annually for each taxable year of the contractee and on the basis of all pertinent information, the Department of Revenue and Taxation shall compute the total tax liability of the contractee in Louisiana and the total tax liability that the contractee would have incurred had the contractee located in the competing state. The Department of Economic Development, Office of Commerce and Industry will assist the Department of Revenue and Taxation should any audit of the tax data for the competing state be necessary.

E. If the total tax liability of the contractee in Louisiana for the contractee's taxable year is greater than the total tax liability that the contractee would have incurred in the competing state, then the contractee's Louisiana tax liability shall be reduced by allowing an exemption until the Louisiana tax burden is equal to the tax burden the contractee would have incurred if it had located in the competing state.

F. Unless the Department of Revenue and Taxation for valid written reasons recommends otherwise and the Board of Tax Appeals approves such recommendations, exemptions from taxation for a new warehousing and distribution establishment, shall be granted in the following priority:

1. state sales and use tax on purchases and leases of, and repairs to, machinery and equipment which is used in the on-site operation of the new warehousing and distribution establishment;
2. the corporation franchise tax;
3. the corporation income tax;
4. state sales and use tax on purchases of materials and supplies necessary for the on-site operation of the new warehousing and distribution establishment;
5. state sales and use tax on purchases of tangible personal property used in the construction of the new warehousing and distribution establishment;
6. any other taxes imposed by the state to which like businesses are subject. Exemptions from taxation shall be granted in the following priority.

G. In no event shall any exemption from ad valorem property taxes be granted under any contract entered into. This exemption applies only to sales and use tax imposed by the state of Louisiana and does not apply to such taxes authorized and levied by any school board, municipality, or other local taxing authority notwithstanding any other provision of the law to the contrary.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1056 (December 1989).

§2517. Contract Period/Project Completion Report

A. Contractee must file a project completion report, on forms provided by the Office of Commerce and Industry, within 30 days following the last day of the month after effective use of the structure has begun or construction is essentially complete, whichever occurs first.

B. The first year of the five-year new warehousing and distribution tax equalization contract period shall be the taxable year of the contractee in which operations begin as specified in the Project Completion Report, which report shall become an addendum to this contract. The contract shall expire on the last day of the forty-eighth month following the end of the taxable year of contractee in which operations begin.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989).

§2519. Affidavit of Final Cost

A. Within six months after completion of construction or the purchase of facility, the owner of the new warehousing and distribution establishment shall file on the prescribed form an affidavit of final cost showing complete cost of the project, together with a fee of \$100 for the facility inspection which will be conducted by the Office of Commerce and Industry.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989).

§2521. Contract Renewals

A. Not more than one year prior to the expiration of a contract and not less than six months prior to the expiration, a company wishing an additional five-year contract period shall file with the Board of Commerce and Industry the information required in §2513 regarding certification of taxes. A renewal fee of \$50 must accompany the renewal application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989).

§2523. Annual Review/Violation of Contract

A. The contractee agrees to an annual review and inspection by the Department of Economic Development and shall make all books and records of the company available for inspection. The contractee agrees to have an officer of authority in attendance at the yearly review of the exemption by the Department of Economic Development. Included in this annual review shall be a review of employment data on the average number of jobs by month.

B. Written notice of any violations of the terms and conditions of this contract shall be given to contractee, who shall have 90 days within which to correct the violations. If the violation is not corrected within 90 days, any remaining portions of the exemption from tax granted under this contract may be terminated.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:3201-3206.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:1057 (December 1989).

Chapter 27. Technology Commercialization Credit

§2701. Purpose and Application

A. The purpose of this Chapter is to implement the Technology Commercialization Credit Program as established by R.S. 51:2351 et seq.

B. This Chapter shall be administered to achieve the following purposes:

1. to induce companies purchasing the rights to commercialize technology produced at a Louisiana university to locate and grow their businesses in Louisiana;
2. to expand the economy of the state by enlarging its base of technology and research-based businesses;
3. to enlarge the number of quality jobs available to an educated workforce to retain the presence of young people educated in Louisiana colleges and universities; and
4. to attract and retain the finest research faculty to Louisiana universities.

C. This Chapter shall apply to any person:

1. seeking to become qualified to claim a credit;
2. claiming a credit;
3. selling or otherwise transferring a credit; or
4. purchasing or otherwise acquiring a credit under this program.

D. An individual or business may earn a credit on any income or corporation franchise tax liability equal to 15 percent of the amount of money invested in commercialization costs of qualified technology. The credit may be carried forward for up to 20 years, or under certain circumstances may be sold.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2351 and 2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004).

§2703. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2352 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Commercialization—the development of a technology into a commercial product by going through the process of prototyping, securing funding, and other steps necessary to get the final product to the marketplace. Commercialization begins after a technology has been reduced to practice and the company is proceeding to develop a commercial market.

Credit Certification—a certification by DED of the amount of the technology commercialization credit earned by a Taxpayer for a particular tax year.

DED—Louisiana Department of Economic Development.

Eligibility Certification—a certification by the DED that a taxpayer is eligible to earn technology commercialization credits.

Technology Commercialization Credits—credits against Louisiana income or corporation franchise taxes that are earned by a taxpayer pursuant to the provisions of the Technology Commercialization Credit Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:979 (May 2004).

§2705. Determination of Eligibility to Earn Technology Commercialization Credits

A. Prior to earning any credits pursuant to the Technology Commercialization Credit Program, a taxpayer must apply for and obtain an eligibility certification from DED that the taxpayer is eligible to earn such credits.

B. The application for eligibility certification must be submitted prior to the end of the taxpayer's tax year for which the taxpayer first seeks to earn a technology commercialization credit.

C. A taxpayer shall apply for an eligibility certification by submitting an application on a form specified by the DED and provide at a minimum, the following information:

1. a description of the technology to be commercialized;
2. a description of how and from whom (what university) the technology was acquired including the terms of the acquisition;
3. if the technology is not owned by a university, in what manner research was sponsored by the university or what significant development or enhancement to the technology occurred at the university;
4. a pro forma statement of the company's planned investment to commercialize the technology showing at least \$250,000 in the first taxable year and \$2,000,000 by the end of the fourth taxable year;
5. any other information requested by DED.

D. DED shall review the application and, if DED determines that the taxpayer is eligible under the provisions of the Technology Commercialization Credit Program to earn technology commercialization credits, DED shall issue an eligibility certificate. DED shall maintain a record of all eligibility certificates issued and shall provide a copy of each certificate to the Louisiana Department of Revenue.

E. An eligibility certification shall be valid for a period of four tax years of the taxpayer.

F. An eligibility certification may be renewed for an additional four tax years on the following conditions:

1. the taxpayer has complied with all requirements of the program for the initial four tax years; and
2. an application for renewal is filed with DED not sooner than the end of the fourth tax and no later than the end of the fifth tax year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:979 (May 2004).

§2707. Certification of Amount of Credit

A. Prior to claiming a technology commercialization credit on any tax return or selling any technology commercialization credit, a taxpayer must apply for and obtain a credit certification from DED. A taxpayer must have been issued an eligibility certification before a credit certification may be issued.

B. The application for a credit certification shall be submitted on a form provided by the DED. The application shall include a detailed itemization of all commercialization costs incurred during the tax year.

C. DED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:979 (May 2004).

§2709. Sale of Technology Commercialization Credits

A. Technology commercialization credits may be transferred only by sale approved by DED. No sale or other transfer of a technology commercialization credit shall be valid until the proposed sale or transfer is submitted to DED for approval and approved by DED.

B. A request for the approval of a sale or transfer shall be to the DED in writing and shall include the following information:

1. a copy of the proposed sale or transfer detailing all of its terms;
2. a reference to the original eligibility certification and credit certification that authorized the technology commercialization credit; and
3. copies of the taxpayer's last two LDOL Quarterly Report of Wages.

C. The taxpayer's business must be within one of the following clusters as described in Louisiana Vision 2020, 2003 Update:

1. advanced materials;
2. agriculture and food products;
3. entertainment;
4. environmental technologies;
5. food technologies;
6. health care;

7. information technologies;
8. life sciences (including biomedical and biotechnology);
9. micro- and nano- technologies;
10. oil, gas and energy technologies;
11. chemicals/petrochemicals;
12. shipbuilding and other durable goods manufacturing;
13. transportation and logistics;
14. tourism;
15. wood, lumber, and paper.

D. DED shall review the proposed sale and if the sale complies with the criteria established by law, DED shall issue an approval certification. DED shall maintain a record of all credits sold and provide a copy of all approved sales to the Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:979 (May 2004).

§2711. Application Fee

A.1. An application fee in the amount of \$200 shall be submitted with the each application.

2. All fees shall be made payable to:

Louisiana Department of Economic Development

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:980 (May 2004).

§2713. Eligible Commercialization Costs

A. Investment in machinery and equipment shall include:

1. the purchase price, including any taxes and costs of delivery and installation, and any lease payments on a capitalized lease, less any sales taxes rebated under any tax incentive program, such as the enterprise zone or quality jobs programs;
2. the machinery and equipment must remain in use at the business location during the four tax years the taxpayer is eligible to earn the credit or its expected useful life, whichever is less. The sales price, trade in value, or other value received in the sale or disposition of the machinery or equipment shall be deducted from the commercialization costs for that year.

B. Other expenditures must be associated with obtaining the rights to use or the use of technology, and may include:

1. any transaction costs incurred in obtaining technology rights such as attorney fees for negotiation of licensing agreements, accounting, or other fees;

2. costs incurred for the use of technology such as royalties or licensing fees; and

3. costs incurred in protecting the rights to technology such as costs for filing or obtaining patents, recordation fees.

C. No expenditures for which a research and development tax credit was claimed pursuant to R.S. 47:6015 shall be eligible as a commercialization cost.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:980 (May 2004).

§2715. Recapture of Credits

A. An application for eligibility certification or credit certification shall constitute:

1. a consent by the taxpayer that in the event the taxpayer must repay any technology commercialization credits or the sales price of any technology commercialization credits pursuant to the provisions of R.S. 51:2353(E)(1) or (E)(2):

a. the Secretary of the Department of Revenue may recover any such amounts as authorized by R.S. 47:1561.2; and

b. such amounts will be deemed to constitute a rebate or refundable tax credit; and

2. a written agreement between the taxpayer and the Secretary of the Department of Revenue for the suspension of the running of prescription for any technology commercialization credits claimed by the taxpayer or the sales proceeds of any technology commercialization credits until one year after the end of the fourth tax year of the eligibility certification;

3. a consent by the taxpayer that the Department of Revenue may disclose to DED, any tax information of the taxpayer related to the earning of, or use of technology commercialization credits by the taxpayer or any other information required by DED for the effective administration of this program, provided that such tax information, shall remain confidential in the possession of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2353.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:980 (May 2004).

Chapter 29. Research and Development Tax Credit

§2901. Purpose and Application

A. The purpose of this Chapter is to implement the Research and Development Tax Credit Program as established by R.S. 47:6015.

B. This Chapter shall be administered to achieve the following purposes:

1. encourage the development, growth, and expansion of the private sector within the state; and

2. encourage new and continuing efforts to conduct research and development activities within this state.

C. This Chapter shall apply to any person:

1. claiming a credit;

2. selling or otherwise transferring a credit; or

3. purchasing or otherwise acquiring a credit under this program.

D. A person may earn a credit against income or corporation franchise tax liability for the following:

1. any person who claims for the taxable year a federal income tax credit under 26 U.S.C. §41(a) for increasing research activities may receive a credit in the amount of either:

a. 8 percent of the state's apportioned share of the taxpayer's expenditures for increasing research activities; or

b. 25 percent of the state's apportioned share of the federal research credit claimed for research expenditures in the state if the taxpayer claims the alternative incremental tax credit under 26 U.S.C. §41; and

2. a person who receives a federal Small Business Innovation Research Grant as created by the Small Business Innovation Development Act of 1982 (P.L. 97-219), reauthorized by the Small Business Research and Development Enhancement Act (P.L. 102-564), and reauthorized again by the Small Business Reauthorization Act of 2000 (P.L. 106-554), may receive a credit in an amount equal to 8 percent of the award.

B. The credit may be carried forward for up to 10 years, or under certain circumstances may be sold pursuant to the provisions of R.S. 47:6015 and this Chapter.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004).

§2903. Definitions

A. Terms not otherwise defined in this Chapter shall have the same meaning given to them in R.S. 51:2352 unless the context clearly requires otherwise.

B. In this Chapter, the following terms shall have the meaning provided in this Section, unless the context clearly requires otherwise.

Credit Certification—a certification by DED of the amount of the Research and Development Tax Credit earned by a person for a particular tax year.

DED—Louisiana Department of Economic Development.

Person—any natural person or legal entity including an individual, corporation, partnership, or limited liability company.

Qualified Research Expenses in the State—expenses that are qualified research expenses under 26 U.S.C. §41(b) and meet the following requirements:

- a. wages described in 26 U.S.C. §41(b)(2)(A)(i) shall be paid to individuals who are residents of Louisiana and perform their services in Louisiana;
- b. supplies described in 26 U.S.C. §41(b)(2)(A)(ii) shall be consumed in Louisiana;
- c. expenses for the right to use computers as described in 26 U.S.C. §41(b)(2)(A)(iii) shall be for the use of computers located in Louisiana; and
- d. contract research expenses as described in 26 U.S.C. §41(b)(3) shall be for services performed in Louisiana.

Research and Development Tax Credits—credits against Louisiana income or corporation franchise taxes that are earned by a person pursuant to the provisions of the Research and Development Tax Credit Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004).

§2905. Certification of Amount of Credit

A. Prior to claiming a research and development tax credit on any tax return or selling any research and development tax credit, a person must apply for and obtain a credit certification from DED.

B. The application for a credit certification shall be submitted on a form provided by the DED and provide all information requested on the application. DED may request additional information if necessary.

C. DED shall review the application and issue a credit certification in the amount determined to be eligible and provide a copy to the Department of Revenue. The credit certification and the amount of such certification shall be considered preliminary and shall be subject in all respects to audit by the Louisiana Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:977 (May 2004).

§2907. Sale of Research and Development Tax Credits

A. Research and development tax credits may be transferred only by sale approved by DED. No sale or other transfer of a research and development tax credit shall be valid until the proposed sale or transfer is submitted to DED for approval and approved by DED.

B. A request for the approval of a sale or transfer shall be to the DED in writing and shall include the following information:

1. a copy of the proposed sale or transfer detailing all of its terms;

2. a reference to the original credit certification that authorized the research and development tax credit; and

3. copies of the taxpayer's last two LDOL Quarterly Report of Wages.

C. The taxpayer's business must be within one of the following clusters as described in Louisiana Vision 2020, 2003 Update:

1. advanced materials;
2. agriculture and food products;
3. entertainment;
4. environmental technologies;
5. food technologies;
6. health care;
7. information technologies;
8. life sciences (including biomedical and biotechnology);
9. micro- and nano- technologies;
10. oil, gas and energy technologies;
11. chemicals/petrochemicals;
12. shipbuilding and other durable goods manufacturing;
13. transportation and logistics;
14. tourism;
15. wood, lumber, and paper.

D. DED shall review the proposed sale and if the sale complies with the criteria established by law, DED shall issue an approval certification. DED shall maintain a record of all credits sold and provide a copy of all approved sales to the Department of Revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004).

§2909. Application Fee

A.1. An application fee in the amount of \$200 shall be submitted with the each application.

2. All fees shall be made payable to:

Louisiana Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004).

§2911. Recapture of Credits

A. An application for credit certification shall constitute:

1. a consent by the taxpayer that credits granted under this Section, but later disallowed in whole or in part, may be recovered by the Secretary of the Department of Revenue from the taxpayer applicant through any collection remedy authorized by the provisions of R.S. 47:6015(H); and

2. a consent by the taxpayer that the Department of Revenue may disclose to DED, any tax information of the taxpayer related to the earning of, or use of research and development tax credits by the taxpayer or any other information required by DED for the effective administration of this program, provided that such tax information, shall remain confidential in the possession of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:6015.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development Services, Business Resources Division, LR 30:978 (May 2004).

Chapter 31. Assessment of Tax-Exempt Pollution Control Equipment

§3101. Assessment of Tax-Exempt Pollution Control Equipment

A. Six months prior to the date of expiration of an industrial tax exemption contract on air or pollution control equipment, the subject company will file with the Board of Commerce and Industry the following information:

1. four copies of the tax exemption contract covering the equipment;
2. four copies of the certification by the Louisiana Air and/or Stream Control Commission(s) that the subject equipment is a valid pollution control device;
3. four certified copies of a rendition of the actual market value of the equipment at the time the tax exemption is to expire, according to the method set forth in Act 69.

B. Upon receipt of this material it will be reviewed for content by the Board of Commerce and Industry, meeting in regular session, prior to the expiration date of the tax exemption contract.

C. If the board is satisfied with the information received, it will direct the Executive Director of the Department of Commerce and Industry to issue to the subject company a letter certifying that:

1. a valid tax exemption contract has existed on subject pollution abatement equipment;
2. it meets the standards of the appropriate state pollution control agencies;
3. it appears to qualify under the provisions of Act 69 of 1973 covering the method such pollution control equipment is to be assessed.

D. The original of this document is to be returned to the subject company, along with one copy each of the items listed in Section I of this resolution. A copy of the letter of certification, together with one copy each of the items in Section I of this resolution, is to be forwarded to the Assessor of the Parish in which subject equipment is located, and a duplicate copy of all material sent to the Louisiana Tax Commission.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:305.31.

HISTORICAL NOTE: Adopted by the Board of Commerce and Industry, March 1974, by resolution.

Title 13

ECONOMIC DEVELOPMENT

Part III. Financial Assistance Programs

Chapter 1. Economic Development Award Program (EDAP) and Economic Development Loan Program (EDLOP)

§101. Economic Development Award Program (EDAP); Preamble and Purpose

A. The Economic Development Award Program (EDAP) is vital to support the state's commitment to Cluster Based (or Targeted Industry Based) Economic Development, and the state's long term goals as set forth in *Louisiana: Vision 2020*, which is the Master Plan for Economic Development for the state of Louisiana.

B. The purpose of this program is to finance publicly owned infrastructure for industrial or business development projects that promote cluster or targeted industry economic development and that require state assistance for basic infrastructure development. Additionally, the Louisiana Department of Economic Development, with the approval of the Board of Directors of Louisiana Economic Development Corporation, may take necessary steps to successfully secure projects in highly competitive bidding circumstances.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December 1997), LR 25:237 (February 1999), LR 26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:860 (June 2003), LR 31:902 (April 2005).

§103. Definitions

Applicants—the company and the public entity, collectively, requesting financial assistance from LED under this program.

Award—funding of financial assistance, appropriations, grants or loans approved under this program for eligible applicants.

Award Agreement—that agreement or contract hereinafter referred to between the company, the public entity, LED and LEDC through which, by cooperative endeavor or otherwise, the parties set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

Awardee—an applicant receiving an award under this program.

Basic Infrastructure Project—refers to those infrastructure projects funding for which is to be provided under this program.

Company—the business enterprise for which the project is being undertaken.

EDAP—the Economic Development Award Program.

Infrastructure—considered to be basic hard assets, permanent type assets, such as land, buildings, structures, substantial, installed or permanently attached machinery and/or equipment, streets, roads, highways, rights-of-way or servitudes, including paving or other hard surfacing, piping, drainage and/or sewage facilities, utility lines, poles and facilities, railroad spurs, tracks, cross ties, and all things similar or appurtenant thereto, and including costs related to the purchase, design, location, construction, and/or installation of such hard assets.

Infrastructure Project—refers to the undertaking for which an award is granted hereunder for the purchase, or new construction, improvement or expansion of land, roadways, parking facilities, equipment, bridges, railroad spurs, utilities, water works, drainage, sewage, buildings, ports and waterways.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

Program—the Economic Development Award Program, including Basic Infrastructure Projects that are undertaken by LED, LEDC, the public entity and the company pursuant to these rules and the bylaws of LEDC.

Project—an expansion, improvement and/or provision of infrastructure for a public entity that promotes economic development, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

Public Entity—the public or quasi-public entity responsible for engaging in the award agreement and pursuant thereto, for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

Secretary—the Secretary of the Department of Economic Development, who is also the President of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:36 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1638 (December

1997), LR 25:237 (February 1999), LR 26:236 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:902 (April 2005).

§105. General Principles

A. The following general principles will direct the administration of the Economic Development Award Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC board, after considering the recommendation of the secretary and/or the staff of LED or LEDC.

2. An award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Awards must reasonably be demonstrated to result in the improvement of or enhancement to the economic development and well being of the state and local community or communities wherein the project is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and to the local community or communities wherein the project is or is to be located will be considered in making the award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the award.

7. Appropriate cost matching or funds matching by the Applicants, private investors, the local community and/or local governing authority, as well as among project beneficiaries will be a factor in the consideration of the award.

8. At the discretion of the LEDC board, a two-year moratorium from the date of an LEDC board approval or award of a grant may be required on additional EDAP awards to the same company at the same location.

9. Award funds shall be utilized for the approved project only.

10. Whether or not an award will be made is entirely in the discretion of the LEDC board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC board may, in its discretion, deem to be pertinent. The approval or rejection of any application for an award shall not establish any precedent and shall not bind the LEDC board, the LED secretary or the staff of LED or LEDC to any course of action with regard to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005).

§107. Eligibility

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below, and the infrastructure project must be or will be owned by, and the ownership benefits or rights resulting from the infrastructure project must inure to the benefit of one of the following:

1. a public or quasi-public entity; or
2. a political subdivision of the state.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving an award, fail to maintain its eligibility during the term of the award agreement, the LEDC board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for awards under this program are:

- a. retail business operations;
- b. real estate developments;
- c. hospitality operations; or
- d. gaming operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Louisiana Economic Development Corporation, LR 23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:861 (June 2003), LR 31:903 (April 2005).

§109. Criteria for Basic Infrastructure Projects

A. In addition to the general principles set forth above, Basic Infrastructure Projects must meet the criteria hereinafter set forth for an award under the program.

1. Job Creation and/or Retention and Capital Investment

a. Basic Infrastructure Projects must create or retain at least 10 permanent jobs in Louisiana.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created as stated in the application for basic infrastructure projects will be strictly adhered to, and will be made an integral part of the award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as cluster or targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to expand, improve or provide basic infrastructure supporting mixed use by the company and the surrounding community.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.

6. The minimum award request size shall be \$25,000.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, within six months after its application approval, the LEDC board of directors, at its discretion, may cancel funding for the project, or require reapplication. LED or LEDC may require written, signed documentation demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:37 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:862 (June 2003), LR 31:904 (April 2005).

§111. Application Procedure for Basic Infrastructure Projects

A. The applicants must submit an application to LED or LEDC on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. evidence of the number, types and compensation levels of jobs to be created or retained by the company in connection with the project, and the amount of capital investment for the project;

4. details of the health insurance coverage that is or will be offered to employees of all levels of the company;

5. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project described in the award application; and

6. any additional information that LED or LEDC may require.

B. The applicants and their applications must meet the general principles of §105, the eligibility requirements under §107, and meet the criteria set forth in §109 above, in order to qualify for an award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005).

§113. Submission and Review Procedure for Basic Infrastructure Projects

A. Applicants must submit their completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by LED or LEDC staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;

2. validate the information presented;

3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, including an evaluation based on the Regional Input/Output Model System II (RIMS), or its successor, will be prepared by LED or LEDC.

C. Upon determination that an application meets the general principles of §105, the eligibility requirements under §107, and meets the criteria set forth for this program under §109, the secretary of LED and/or the LED or LEDC staff will then make a recommendation to the LEDC board of directors. The application will then be reviewed and approved or rejected by the LEDC board in its discretion, after considering the recommendation of the secretary of LED and/or the staff of LED or LEDC. The cluster director or the targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC board as to the approval or disapproval of the award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1639 (December 1997), LR 25:238 (February 1999), LR 26:237 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:863 (June 2003), LR 31:904 (April 2005).

§115. General Award Provisions

A. Except where indicated, these provisions shall be applicable to Basic Infrastructure Awards. All agreements, including those resulting from any expedited procedures, shall demonstrate the intent of the company, the public entity, LED, and LEDC to enter into the following.

1. Award Agreement. A written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, the public entity and the company(ies). The agreement will specify the performance objectives and requirements the company(ies) and the public entity will be required to meet, and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, and the payroll levels of such jobs. Under the agreement, the public entity will oversee the progress of the project. LED or LEDC will disburse funds to the public entity in a manner determined by LED or LEDC.

2. Funding

a. Eligible project costs may include costs related to the design, location, construction and/or installation of basic infrastructure hard assets, including, but not limited to, the following:

- i. engineering and architectural expenses related to the project;
- ii. site (land) and/or building acquisition;
- iii. site preparation;

iv. construction, renovation and/or rebuilding expenses; and/or

v. building materials.

b. Project costs ineligible for award funds include, but are not limited to:

i. recurrent expenses associated with the project (e.g., operation and maintenance costs);

ii. company moving expenses;

iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. improvements to privately-owned property, unless provisions are included in the project for the transfer of ownership to a public or quasi-public entity;

v. refinancing of existing debt, public or private;

vi. furniture, fixtures, computers, consumables, transportation equipment, rolling stock or movable equipment.

B. Amount of Award. Following the appropriation of funds for each fiscal year, the board of directors of LEDC shall allocate the amount of such funds available for Basic Infrastructure Awards.

1. For Basic Infrastructure Awards

a. Matching funds shall be a consideration.

b. The portion of the total project costs financed by the award may not exceed:

i. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or

ii. 75 percent for projects in parishes with unemployment rates above the statewide average; or

iii. 50 percent for all other projects.

c. Other state funds cannot be used as the match for EDAP funds.

d. All monitoring will be done by LED or LEDC. Expenditures for monitoring or fiscal agents may be deducted from awards.

e. The award amount shall not exceed 25 percent of the total funds allocated to the Basic Infrastructure Awards Program during a fiscal year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of \$3.1 million.

f. The LEDC board of directors, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

C. Conditions for Disbursement of Funds

1. Award funds will be available to the public entity on a reimbursement basis in accordance with the award agreement following submission of required documentation to LED or LEDC from the public entity.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC board of directors will be considered eligible for reimbursement.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement (contract) has been agreed upon, signed and executed.

3. Award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed or obtained;

c. all other closing conditions specified in the award agreement have been satisfied.

4. Awardees will be eligible for reimbursement at 85 percent until all or substantially all of the tasks or work required by the award agreement have been performed or completed. After the awardee has performed or completed or substantially performed or substantially completed the tasks or work required by the award agreement, the final 15 percent of the award amount will be paid after LED or LEDC staff or its designee inspects the project to assure that all or substantially all of the tasks or work required by the award agreement have been performed or completed. Such tasks or work shall be considered substantially performed or substantially completed when LED or LEDC has determined that the benefits to the state anticipated or expected as a result of the project, tasks or work performed have been achieved, even though 100 percent of all stated objectives of the award agreement may not have been fully achieved.

D. Compliance Requirements

1. Companies and public entities shall be required to submit progress reports, describing the progress towards the performance objectives specified in the award agreement. Progress reports by public entity shall include a review and certification of company's hiring records and the extent of company's compliance with contract employment commitments. Further, public entity shall oversee the timely submission of reporting requirements of the company to LED.

2. Award Agreements will contain "clawback" or refund provisions to protect the state in the event of a default. In the event a company or public entity fails to meet its performance objectives specified in its agreement with LED and LEDC, LED and LEDC shall retain the rights to

withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state. Reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project.

3. In the event a company or public entity knowingly files a false statement in its application or in a progress report or other filing, the company or public entity and/or their representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company, public entity, or party to an award agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC is authorized to notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:38 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1640 (December 1997), LR 25:239 (February 1999), LR 26:238 (February 2000), amended by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), LR 31:905 (April 2005).

§117. Conflicts of Interest

A. No member of Louisiana Economic Development Corporation, employee thereof, or employee of the Louisiana Department of Economic Development, nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:864 (June 2003), amended LR 31:906 (April 2005).

§119. Reserved**§121. Reserved**

["General Award Provisions" redesignated as §115]

§123. Reserved

["Conflicts of Interest" redesignated as §117]

§131. Economic Development Loan Program (EDLOP); Preamble and Purpose,

A. The Economic Development Loan Program (EDLOP) is vital to support, promote and enhance the state's commitment to economic development, and the state's long term goals as set forth in *Louisiana: Vision 2020*, which is the long-term Master Plan for Economic Development for the state of Louisiana. This program is a supplement to and an expansion or extension of the already existing Economic Development Award Program (EDAP).

B. The purpose of this program is to assist in the financing or loan funding of privately-owned property and improvements, including the purchase of a building site, the purchase or construction, renovation, rebuilding and improvement of buildings, their surrounding property, and for machinery and equipment purchases and rebuilding, all for business enterprises newly locating in Louisiana or for businesses already existing in this state which are expanding their operations and that require state assistance for such development, rebuilding or other such improvement, and for which LED and LEDC assistance is requested under this program, all of which will promote economic development and provide an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:906 (April 2005).

§133. Definitions

Applicant—the company or business enterprise requesting or seeking financial assistance, specifically a loan, from LED and LEDC under this program. The applicant may be, but is not required to be, joined in the application by any other person, public or private entity, as a co-applicant or as a guarantor.

Award—funding of financial assistance, specifically a loan, approved under this program for eligible applicants, which is to be repaid with interest over a period of time by the awardee/borrower.

Awardee—an applicant, company or business enterprise receiving a loan award under this program.

Borrower—the company or business enterprise receiving and accepting a loan award under this program.

Company—the business enterprise, being a legal entity duly authorized to do and doing business in the state of Louisiana, in need of loan funding for a project pursuant to

these rules, which is undertaking the project or for which the project is being undertaken, and which is seeking or receiving a loan award under this program.

Default—the failure to perform a task, to fulfill an obligation, or to do what is required; or the failure to pay, to repay or to meet a financial obligation.

EDLOP—the Economic Development Loan Program.

Financed Lease—a lease entered into that satisfies the criteria of a lease intended as a security device for the payment or repayment of a debt, a loan or an obligation; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the installment payments of the loan shall be the lease or rental payments.

Guaranty—an agreement, promise or undertaking by a second party to make the payment of a debt or loan or to perform an obligation in the event the party liable in the first instance fails to make payment or to perform an obligation.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

LEDC Board—the board of directors of the Louisiana Economic Development Corporation.

Loan (or Loan Award)—funding of financial assistance approved under this program for eligible applicants, which is to be repaid with interest over a period of time by the awardee/borrower.

Loan Agreement (Award Agreement or Loan Award Agreement)—that agreement or contract hereinafter referred to between the company, LED and LEDC through which, by cooperative endeavor agreement or otherwise, the parties set forth the terms and conditions of the loan to be provided pursuant to these rules, and the performance objectives and requirements of the company as consideration for the award of the loan provided pursuant to the company's application and these rules.

Loan Participation—the sharing by one lender of a part or portion of a loan with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds, or may purchase a portion of the loan, and which participant or participants would be entitled to share in the proceeds of the loan repayments and interest income.

Program—the Economic Development Loan Program (EDLOP), involving such projects that are undertaken by LED, LEDC and the company pursuant to these rules and the bylaws of LEDC.

Project (or Infrastructure Project)—refers to the undertaking for which a loan award is sought and/or is granted hereunder for the purchase of a to be privately-owned building site, or for the purchase, construction, improvement, expansion, renovation, rebuilding or expansion of privately-owned buildings and their surrounding property, including parking facilities, private roads, railroad spurs and utility needs, including electrical,

gas, telephone, water and sewerage lines, as well as certain qualified machinery and equipment, for a private entity which will promote economic development, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to locate in Louisiana, maintain or expand its Louisiana operations, and/or increase its capital investment in Louisiana.

Promissory Note—a written promise to pay or repay a specified amount of money on a stated date, or within a stated time, in installments, or on demand.

Secretary—the Secretary of the Department of Economic Development, who is also the President of LEDC.

Security Interest—a lien, incumbrance or mortgage affecting movable or immovable property given by a debtor or borrower in favor of a creditor or lender to assure the debtor's or borrower's payment or repayment of a debt or promise to pay an amount of money, or for the fulfillment or performance of an obligation. A security interest may also be reserved in favor of the creditor or lender in the form of a lease, commonly called a "Financed Lease"; in which case the creditor or lender shall be the lessor, the debtor or borrower shall be the lessee, and the lease or rental payments shall be the installment payments of the loan.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005).

§135. General Principles

A. The following general principles will direct the administration of the Economic Development Loan Program.

1. Loan awards are not to be construed as an entitlement for companies locating or located in Louisiana, and are subject to the discretion of the LEDC board, after considering the recommendation of the secretary and/or the staff of LED or LEDC.

2. A loan award must reasonably be expected to be a significant factor in a company's location, investment and/or expansion decisions.

3. Loan awards must reasonably be demonstrated to result in an improvement of or enhancement to economic development of the state and the local community wherein the business is or is to be located.

4. The retention and strengthening of existing businesses will be evaluated using the same procedures and criteria, and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state and the local community will be considered in approving the loan award.

6. The favorable recommendation of the local governing authority wherein the project is or shall be located is expected and will be a factor in the consideration of the loan award.

7. Appropriate cost matching or funds matching by the loan beneficiary, as well as private investors, the local community, local public entities, and/or local governing authority, will be a factor in the consideration of the loan award.

8. Loan funds shall be utilized for the approved project only.

9. Whether or not a loan award will be made is entirely in the discretion of the LEDC board, after considering the recommendation of the secretary and/or the staff of the LED or the LEDC; and shall depend on the facts and circumstances of each case, the funds available, funds already allocated, and other such factors as the LEDC board may, in its discretion, deem to be pertinent. The approval or rejection of any application for a loan award shall not establish any precedent and shall not bind the LEDC board, the LED secretary or the staff of LED or LEDC to any course of action with regard to any application.

10. A Loan Award may also take the form of a Loan Participation, wherein LED or LEDC may act as the originator of the loan, and may share or participate a portion of the loan with another lender or other lenders; or LED or LEDC may act as a participant in a loan, and accept a portion or a share of a loan originated by another lender or other lenders.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:907 (April 2005).

§137. Eligibility

A. An eligible application for the loan award must be consistent with the general principles set forth in §135 above and the criteria set forth in §139 below, must demonstrate a need for the funding of the project consistent with these rules, and the project must be or will be owned by, and the ownership benefits or rights resulting from the project must inure to the benefit of the applicant company or business enterprise, which will also be the borrower.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED or LEDC in which the company is in default and/or is not in compliance. Should a company, after receiving a loan award, fail to maintain its eligibility during the term of the award agreement, the LEDC board, in its discretion, may terminate the agreement and the award, and may seek a refund of any or all funds previously disbursed under the agreement.

C.1. Businesses not eligible for loans under this program shall include:

- a. retail business operations;
- b. real estate developments;

- c. hospitality operations; or
- d. gaming operations.

2. This ineligibility provision shall not apply to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to ineligible business enterprises, provided that retail sales, hospitality services and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005).

§139. Criteria for Projects

A. In addition to the general principles set forth in §135 and the Eligibility requirements in §137 above, projects must meet the criteria hereinafter set forth for a loan award under this program.

1. Job Creation and/or Retention and Capital Investment

a. Projects must create or retain at least 10 jobs considered to be permanent jobs, in Louisiana.

b. Consideration will be given for projects having a significant new private capital investment.

c. The number of jobs to be retained and/or created, as stated in the application for projects, and their payroll levels will be strictly adhered to, and will be made an integral part of the loan award agreement.

2. Preference will be given to projects for industries identified by LED or LEDC as targeted industries, and to projects located in areas of the state with high unemployment levels.

3. Preference will be given to projects intended to provide, expand or improve basic structural infrastructure and its use by the company, and secondary consideration will be given to projects involving machinery and equipment purchases or rebuilding.

4. Companies must be in full compliance with all state and federal laws.

5. No assistance may be provided for Louisiana companies relocating their operations to another labor market area (as defined by the U.S. Census Bureau) within Louisiana, except when the company gives sufficient evidence that it is otherwise likely to relocate outside of Louisiana, or the company is significantly expanding and increasing its number of employees and its capital investment.

6. The minimum loan award request size shall be \$25,000.

7. Extra consideration will be given for companies paying wages substantially above the prevailing regional wage.

8. If a company does not start the project or begin the purchase or the construction of the project, or make substantial progress toward preparation of architectural and engineering plans and specifications and/or permit applications, or execute purchase orders for machinery and equipment or orders for the rebuilding of machinery and equipment within 120 days after its application approval, the LEDC board of directors, at its discretion, may cancel funding for the project, or require reapplication. Copies of written, signed documentation may be required by LED or LEDC demonstrating that the contemplated project has begun or has been started.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:908 (April 2005).

§141. Application Procedure for Projects

A. The applicant must submit an application to LED or LEDC by letter or on a form provided by LED or LEDC which shall contain, but not be limited to, the following:

1. a business plan that contains an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. a detailed description of the project to be undertaken, along with the factors creating the need, including the purchase, construction, renovation or rebuilding, operation and maintenance plans, a timetable for the project's completion, and the economic scope of the investment involved in the project;

3. a cash flow analysis of the project, providing detailed support for the use of the funding to be provided, and a proposed repayment schedule for the loan which is consistent with the revenues to be generated by the project;

4. evidence of the number, types and compensation levels of jobs to be created or retained by the company in connection with the project, the period of time for which the company will commit to maintain the new and/or retained jobs, and the amount of capital investment for the project;

5. details of the health insurance coverage that is or will be offered to employees of all levels of the company;

6. a statement or disclosure as to whether or not the company has sought or applied for any other type of financing (public or private) for this project, and the results or disposition of that search and/or application;

7. evidence of the support of the local community and the favorable recommendation of the local governing authority for the applicant's project to be financed by the requested loan award; and

8. any additional information that LED or LEDC may require.

B. The applicant and its application must meet the general principles of §135, the eligibility requirements in §137, and meet the criteria set forth in §139 above, in order to qualify for a loan award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005).

§143. Submission and Review Procedure for Projects

A. An applicant must submit its completed application to LED or to LEDC. Submitted applications will be reviewed and evaluated by the staff of LED or LEDC. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;
2. validate the information presented; and
3. determine the overall feasibility of the company's plan.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities, including an evaluation based on the Regional Input/Output Model System II (RIMS), or its successor, will be prepared by LED or LEDC.

C. Upon determination that an application meets the general principles of §135, the eligibility requirements under §137, and meets the criteria set forth for this program under §139, the secretary of LED and/or the staff of LED or LEDC will then make a recommendation to the LEDC board of directors. The application will then be reviewed and approved or rejected by the LEDC board in its discretion, after considering the recommendation of the secretary of LED and/or the staff of LED or LEDC. The cluster director or targeted industry specialist in whose industrial area the applicant company participates may also make a recommendation to the LEDC board as to the approval or disapproval of the loan award.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005).

§145. General Loan Award Provisions

A. These provisions shall be applicable to loan awards. Loan award agreements resulting from the procedures for loan awards shall demonstrate the intent of the company, the LED, and LEDC to enter into the following.

1. Loan Agreement, Award Agreement or Loan Award Agreement. After a loan award has been approved, a written contract, agreement or cooperative endeavor agreement will be executed between LEDC, acting through the LED, and

the company or business enterprise receiving the loan award. The agreement will specify the amount, the terms and conditions of the loan; the performance objectives and requirements the company will be required to meet; and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for investment, for performance, job retention and/or creation, as well as the payroll levels of such jobs. Under the agreement, the staff of the LED or LEDC or their area representatives will oversee or monitor the progress of the project. LED or LEDC will disburse funds to the company, the borrower, in a manner determined by LED or LEDC.

2. Promissory Note. When appropriate, the borrower shall execute an appropriate promissory note containing a promise to pay or repay the loan funds with interest; the rate of such interest to be determined by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such rate of interest, which rate of interest shall not be less than the then current U.S. Government Treasury Security Rate that coincides with the term or time period of the Loan at the time of the loan award approval, nor more than 2.5 percent above such Treasury Security Rate; and such promissory note may provide for the repayment of such funds on a stated date, or within a stated time, in installments or on demand, as determined by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such repayment terms.

3. Security Interest. When appropriate, and if required by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such security interest, the borrower shall execute an appropriate security instrument or document providing the LEDC and/or LED a security interest in such movable and/or immovable property or any other assets of the borrower as the LEDC board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such security instrument or document to contain all appropriate, usual, customary, and generally accepted Louisiana security provisions.

4. Financed Lease. When appropriate, and if required by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to such security interest, the borrower shall execute an appropriate lease for the purpose of financing and providing security for the loan as the LEDC board shall deem appropriate in the circumstances considering the project and the specific interests and properties relating thereto; such Financed Lease to contain all appropriate, usual, customary, and generally accepted Louisiana lease and security provisions.

5. Examination/Audit of Books, Records and Accounts. LEDC, LED and the state shall retain and shall have the right to examine/audit all books, records and accounts of the borrower and its project at any time and from time to time, as well as all books, records and assets of any and all guarantors.

6. Guaranties. Should the circumstances warrant, and if required by the LEDC board in its discretion, considering the recommendation of the secretary and/or the staff of LED or LEDC as to the need for any such guaranty, a guaranty or guaranties of the borrower's obligation to pay or repay the loan proceeds or any part thereof, or a guaranty or guaranties of the company's obligations to perform any or all of its performance requirements or obligations under the loan award agreement, shall be required from any person or persons, company, companies, business enterprise, or any public entity or governmental authority.

7. Execution of Documents. If a borrower does not execute the appropriate documentation which has been prepared by the staff of LED or LEDC for the loan award transaction within 60 days after the completed documentation has been forwarded to the borrower, the borrower shall be required to appear before the LEDC board to explain the delay, and the LEDC board shall have the right to reconsider the loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not execute the documentation within the additional time extended to it, the LEDC board, in its discretion, may withdraw the loan award.

8. Funding

a. Eligible project costs may include, but not be limited to, the following:

- i. site (land) and/or building acquisition;
- ii. engineering and architectural expenses related to the project;
- iii. site preparation;
- iv. construction, renovation and/or rebuilding expenses;
- v. building materials;
- vi. purchases or rebuilding of capital machinery and/or equipment having an Internal Revenue Service (IRS) depreciable life of at least seven years. If any such eligible machinery and/or equipment to be financed by the loan award is not to be located on property owned by the borrower, the owners, lessors and lessees of such private or public property shall each execute an appropriate written lien waiver or release allowing representatives of LED or LEDC to enter upon such private or public property and remove therefrom any or all of such machinery and/or equipment at any time either the LED or the LEDC shall determine such to be in its security interest to do so.

b. Project costs ineligible for award funds include, but are not limited to:

- i. recurrent expenses associated with the project, (e.g., operation and maintenance costs);
- ii. company moving expenses;
- iii. expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding

through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds;

iv. refinancing of existing debt; and/or

v. costs related to furniture, fixtures, computers, consumables, transportation equipment, rolling stock, or any machinery and/or of less than seven years.

9. Loan Participation. If and when appropriate, LED or LEDC, as the originator, may share a part or portion of a loan, with another lender or other lenders, whereby the participant or participants may provide a portion of the loan funds or may purchase a portion of the loan; or LED or LEDC, as a participant, may share in a part or portion of a loan originated by another lender or other lenders, by providing a portion of the loan funds or by purchasing a portion of the loan; in either of which cases the participant or participants shall share in the proceeds of the loan repayments and interest income, and an appropriate Loan Participation Agreement shall be executed between the lenders designating the shares of the parties, outlining the various rights and responsibilities of the parties, providing for the servicing/collecting of the indebtedness, providing for the payment of any fees and reimbursement of any expenses of the servicing party, and containing the usual and customary provisions of such agreements.

B. Allocation of Amount for Loan Awards. Following the appropriation of funds for each fiscal year, the board of directors of LEDC shall allocate, and may revise from time to time, the amount of such funds available for Economic Development Loan Awards.

1. Regarding the amount of such loan awards, matching funds shall be a consideration; and:

a. the portion of the total project costs financed by the loan award may not exceed:

- i. 90 percent for projects located in parishes with per capita personal income below the median for all parishes; or
- ii. 75 percent for projects in parishes with unemployment rates above the statewide average; or
- iii. 50 percent for all other projects;

b. other state funds cannot be used as the match for EDLOP funds;

c. all monitoring will be done by the staff of LED or LEDC and/or their regional representatives. Expenditures for monitoring or fiscal agents may be deducted from such loan awards, at the discretion of the LEDC board, considering the recommendation of the secretary and/or the staff of the LED or the LEDC as to such deductions;

d. the loan award amount shall not exceed 25 percent of the total funds allocated to the loan awards program during a fiscal year, unless the project creates in excess of 200 jobs, or creates an annual payroll in excess of \$3.1 million;

e. the LEDC board of directors, in its discretion, considering the recommendation of the secretary and/or the staff of the LED or the LEDC as to the limitation of the amount of such loan awards, may limit the amount of loan awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

2. Resources shall be allocated by the board of directors of LEDC, in its discretion, considering the recommendations of the secretary and/or the staff of LED or LEDC, in order to effect the best allocation of resources, based upon the number of projects anticipated to require similar funding and the availability of program funds.

C. Conditions for Disbursement of Funds

1. Loan award funds will be available and funded to the borrower pursuant to the loan award agreement following submission of all signed required documentation to LED or LEDC from the company or business enterprise.

2. Program Funding Source

a. If the program is funded through the state's general appropriations bill, only funds spent on the project after the approval of the LEDC board of directors will be considered eligible for such loan awards.

b. If the program is funded through a capital outlay bill, eligible expenses cannot be incurred until a cooperative endeavor agreement or loan award agreement (contract) has been agreed upon, signed and executed.

3. Loan award funds will not be available for disbursement until:

a. LED or LEDC receives signed commitments by the project's other financing sources (public and private);

b. LED or LEDC receives signed confirmation that all required technical studies or other analyses (e.g., environmental or engineering studies), and licenses or permits needed prior to the start of the project have been completed, issued and/or obtained, in the event that such are required in connection with the project; and

c. all other closing conditions specified in the loan award agreement have been satisfied.

4. Awardees will be eligible for the advancement of loan funds after all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. After the awardee has met all such conditions, or performed or completed or substantially performed or substantially completed the conditions required by the loan award agreement, the loan amount may be disbursed to the borrower after the staff of LED or LEDC or its designee has determined, or inspects the project, circumstances or documentation to assure that all or substantially all of the conditions required by the loan award agreement have been met, performed or completed. Such conditions shall be considered substantially met, substantially performed or substantially completed when LED or LEDC has determined, in its discretion, that the

benefits to the state or results anticipated or expected as a result of the conditions to be performed have been achieved, even though 100 percent of all stated conditions of the loan award agreement may not have been fully met or achieved.

D. Withdrawal of Loan Award Funds. The borrower must make the first draw of funds on the loan award within six months from the effective date of the loan award agreement (the effective date being the date the loan award was approved by the LEDC board); otherwise the borrower shall be required to appear before the LEDC board to explain the delay in the project; and should no funds be drawn within an additional three months from the effective date of the loan award agreement, the borrower shall again be required to appear before the LEDC board to explain the delay in the project, and the LEDC board shall have the option and right to reconsider this loan award, and may either withdraw the loan award or grant an extension of time to the borrower. In the event the borrower does not draw any of the loan award funds within the additional time extended to it, the LEDC board, in its discretion, may withdraw the loan award.

E. Compliance Requirements.

1. Companies shall be required to submit to LED or to LEDC periodic progress reports, describing the progress toward the achievement of performance objectives and requirements specified in the loan award agreement. Progress reports shall include a review and certification by the company of its timely promissory note payments, and a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments, including number of jobs created and/or retained, and the payroll levels achieved. Copies of the company's Louisiana Department of Labor (LDOL) ES-4 Forms ("Quarterly Report of Wages Paid") filed by the company may be required to be submitted with periodic progress reports or as otherwise requested by LED or LEDC to support the company's reported progress toward the achievement of performance objectives and employment requirements. Further, LED or LEDC staff shall oversee the timely submission of reporting requirements by the company.

2. In the event a company fails to timely start or to proceed with and/or complete its project, or fails to timely meet its note or installment payment obligations, its performance objectives and/or any employment requirements, including but not limited to the retention or creation of jobs or the reaching of payroll levels within the time agreed, as specified in its loan award agreement with LED and LEDC, any such acts, omissions or failures shall constitute a default under the award agreement, promissory note, security instrument or agreement, lease or other document or agreement entered into in connection with the loan award, and LED and LEDC shall retain all rights to withhold loan award funds, modify the terms and conditions of the loan award, to reclaim the unpaid balance of all disbursed loan funds from the company and/or foreclose on its security interest, or in its discretion to reclaim only a portion of the disbursed loan funds in an amount commensurate with the scope of the unmet performance

objectives and/or requirements and the foregone benefits to the state. In the last instance, reclamation shall not begin unless LED or LEDC has determined, after an analysis of the benefits of the project to the state and the unmet performance objectives and/or requirements, that the state has not satisfactorily or adequately recouped its costs through the benefits provided by the project. Loan award agreements will contain "clawback" or refund provisions to protect the state in the event of a default.

3. In the event an applicant or company knowingly files a false statement in its application or in a progress report or other filing, the company and/or its representatives may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133. In the event an applicant, company or party to an Award Agreement is reasonably believed to have filed a false statement in its application, a progress report or any other filing, LED and/or LEDC shall notify the District Attorney of East Baton Rouge Parish, Louisiana, and may also notify any other appropriate law enforcement personnel, so that an appropriate investigation may be undertaken with respect to the false statement and the application of state funds to the project.

4. LED and LEDC shall retain the right to require and/or conduct, at any time and from time to time, full financial and performance audits of a company and its project, including all relevant accounts, records and documents of the company and/or the guarantor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:909 (April 2005).

§147. Conflicts of Interest

A. No member of Louisiana Economic Development Corporation, employee thereof, or employee of the Louisiana Department of Economic Development, nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104, 36:108, 51:2302, 51:2312, and 51:2341.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 31:912 (April 2005).

Chapter 3. Workforce Development and Training Program

§301. Preamble and Purpose

A. Workforce Development and Training is vital to support the state's commitment to Cluster Based Economic Development, and the state's long-term goals as set forth in Louisiana: Vision 2020, which is the master plan for economic development for the state of Louisiana.

B. The purpose of the program is to enable the development of and provide customized workforce training programs to existing and prospective Louisiana businesses as a means of:

1. improving the competitiveness and productivity of Louisiana's workforce and business community; and
2. assisting Louisiana businesses in promoting employment stability.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:43 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1064 (July 2003).

§303. Definitions

Applicant—the entity or company requesting a training award from LED and LEDC under this program.

Award—funding approved under this program for eligible training activities.

Company—the business enterprise undertaking the workforce training project, and the successful applicant receiving or granted an award under this program.

Contract—a legally enforceable award agreement between DED, the awardee and a sponsoring entity LEDC and the successful applicant-company governing the terms and the conditions of the training award.

Full Time Permanent Job—an employed position requiring the employee to work a full 40-hour work week, and which is not a temporary position.

LED—the Louisiana Department of Economic Development.

LEDC—the Louisiana Economic Development Corporation.

Net Benefit Return to the State—the determination of whether or not the value to the state is equal to or exceeds the amount of the award to the company.

Percentage of Achieved Performance Objectives as Provided in the Contract—an average of that portion achieved by the company of the full time permanent jobs created or upgraded, and that portion achieved by the company of the annual salary levels to be reached, as provided in the contract. The two portions are to be added together, and the total figure is then divided by two, in order to yield the average percentage.

Preference—the discretionary granting of an advantage or priority to one applicant or application over others; allows extra consideration to be given to one applicant or application over others, with regard to the availability of funding.

Program—the Workforce Development and Training Program.

Project—the workforce training endeavor that will enhance the qualifications and productivity of a company's workforce, its employees and prospective employees, for which LED and LEDC assistance is requested under this program as an incentive to influence a company's decision to maintain or expand its Louisiana operations, to increase its capital investment in Louisiana, or to locate a facility in this state.

Secretary—the Secretary of the Louisiana Department of Economic Development, who is, by law, also the president of the Louisiana Economic Development Corporation.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:241 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003).

§305. General Principles

A. The following general principles will direct the administration of the Workforce Development and Training Program:

1. LEDC shall serve as the single review board for this Workforce Development and Training Program which is to be administered by LED;

2. training awards are not to be construed as an entitlement for companies located or locating in Louisiana;

3. awards must reasonably be expected to be a significant factor in a company's location, investment, expansion and/or training decisions;

4. awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities;

5. evaluations for the enhancement of existing Louisiana businesses that are adding locations within the state will be conducted with the same procedures and with the same priority as the recruitment of new businesses to the state;

6. the anticipated economic benefits to the state will be considered as a requirement in making the award;

7. awards will be coordinated with the existing plans and programs of other government agencies whenever appropriate;

8. a train-the-trainer approach will be adopted whenever appropriate in order to strengthen the institutional capacity of public and private sector training providers; and

9. award funds shall be utilized for the approved training project only.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1641 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003).

§307. Program Descriptions

A. This program provides two types of training assistance for companies seeking prospective employees who possess sufficient skills to perform the jobs to be created by the companies. The training to be funded can include:

1. pre-employment training for which prospective employees are identified and recruited for training with the knowledge that the company will hire a portion of the trainees;

2. on-the-job (and/or upgrade) training for employees that is needed to bring the employees up to a minimum skill and/or productivity level.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:242 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1065 (July 2003).

§309. Eligibility

A. An eligible applicant is an employer that seeks customized training services to provide training in a particular industry.

B. The following types of businesses are ineligible for the award of workforce development funds: Retail Businesses; Trucking Companies; Lodging or Hospitality Enterprises; Assisted Living Enterprises, Retirement Communities, or Nursing Homes; and Gaming or Gambling Enterprises.

C. Employees to be trained must be employed in Louisiana, except for projects locating at Stennis Space Center in Mississippi. Employees to be trained for projects at Stennis Space Center must be Louisiana residents.

D. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations; including state or federal taxes, or bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has a previous contract with the Department of Economic Development or LEDC in which the company is in default and/or is not in compliance.

E. Companies must be in full compliance with all state and federal laws.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:44 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1665 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003).

§311. Criteria

A. General (These apply to all training programs administered under these rules.)

1. Preference may be given to applicants in industries identified by the state as targeted or cluster industries, and to applicants locating in areas of the state with high unemployment levels.

2. Employer(s) must be in full compliance with Louisiana unemployment insurance laws.

3. If a company does not begin the project within 365 days of application approval, the LEDC, upon the recommendation of the secretary of LED, may cancel funding of the training project, or may require reapplication.

4. The number of jobs to be retained and/or created as stated in the application will be adhered to and will be made an integral part of the contract.

B. Pre-Employment, Upgrade and On-the-Job Training

1. Applicants must create at least 10 net new full-time permanent jobs in the state, unless upgrade training is involved. Upgrade training must be provided to a minimum of 10 full-time permanent employees.

2. Participation in pre-employment training does not guarantee students a job upon completion of their training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003).

§313. Application Procedure

A. LED will provide a standard application form which applicants will use to apply for assistance. The application form will contain, but not be limited to, detailed descriptions of the following:

1. an overview of the company, its history, and the business climate in which it operates;

2. the company's overall training plan, including a summary of the types and amounts of training to be provided and a description of how the company determined its need for training;

3. the specific training programs for which LED and LEDC assistance is requested, including descriptions of the methods, providers and costs of the proposed training;

4. a fully developed business plan, with financial statements and projections; and

5. any additional information LED or LEDC may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1642 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:242 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003).

§315. Submission and Review Procedure

A. Applicants must submit their completed application to LED. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, other divisions of the Department of Economic Development, LEDC, and other state agencies as needed, in order to:

1. evaluate the importance of the proposed training to the economic well-being of the state and local communities;

2. identify the availability of existing training programs which could be adapted to meet the employer's needs;

3. verify that the business will continue to operate during the period of the contract; and

4. determine if the employer's training plan is cost effective.

B. An economic cost-benefit analysis tailored to the applicant's request shall be conducted by LED to determine the net benefit to the state and/or local community of the proposed training award. The net benefit return to the state shall not exceed two years.

C. Upon determination that an application meets the general principles, eligibility requirements, and criteria for this program, LED staff will then make a recommendation to LEDC; and LEDC will then review and either approve or reject the application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:45 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1066 (July 2003).

§317. General Award Provisions

A. Award Agreement

1. An award agreement or contract will be executed between LEDC and the successful applicant-company. The contract will specify the performance objectives expected of the company and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, the time required for job training, job creation, and the achievement of employee salary levels to be reached by the company.

2. LEDC will disburse funds to the company as provided by the award agreement or contract.

3. LED will oversee the progress of the training and reimburse the company on the basis of cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, submitted by the company on a form provided by LED. LED may request the company at any time and from time to time to submit additional or supporting information.

4. Funds may be used for training programs extending up to two years in duration.

5. Contracts issued under previous rules may be amended to reflect current regulations as of the date of the most recent change, upon request of the company, the recommendation of LED, and approval of LEDC.

B. Funding

1. The Louisiana Workforce Development and Training Program offers financial assistance in the form of a grant for reimbursement of eligible training costs specified in the award agreement.

2. Eligible training costs may include the following:

a. instruction costs: wages for company trainers and training coordinators, Louisiana public and/or private school tuition, contracts for vendor trainers, training seminars;

b. travel costs: travel for trainers, training coordinators and trainees;

c. materials and supplies costs: training texts and manuals, audio/visual materials, raw materials for manufacturer's training purposes only and computer based training (CBT) software; and

d. other costs: when necessary for training, such as facility and/or equipment rental.

3. Training costs ineligible for reimbursement include:

a. trainee wages and fringe benefits;

b. non-consumable tangible property (e.g., equipment, calculators, furniture, classroom fixtures, non-computer based training (CBT) software, unless owned by a public training provider;

c. out-of-state, publicly supported schools;

d. employee handbooks;

e. scrap produced during training;

f. food, refreshments; and

g. awards.

4. Training activities eligible for funding consist of:

a. company-specific skills: skills which are unique to a company's workplace, equipment and/or capital investment;

b. quality standards skills: skills which are intended to increase the quality of a company's products and/or services and ensure compliance with accepted international and industrial quality standards (e.g., ISO standards); and

c. skills pertaining to instructional methods and techniques used by trainers (e.g., train-the-trainer activities).

C. Conditions for Disbursement of Funds

1. Funds will be available on a reimbursement basis following submission of required documentation to LED by the company. Funds will not be available for reimbursement until a training agreement or contract between the company and LEDC has been executed. Only funds spent on the project after LEDC's approval will be considered eligible for reimbursement. However, reimbursements can be provided to the company only after final execution of a contract with LEDC.

2. Companies will be eligible for reimbursement on a percentage of achieved performance objectives as provided in the contract, until all or substantially all of its contracted performance objectives have been met. After the company has achieved all or substantially all of its contracted performance objectives, any remaining unpaid portion of the grant award will be made available for reimbursement. Performance objectives shall be considered substantially achieved when LED and LEDC have determined that the benefits to the state anticipated or expected as a result of the training project have been achieved, even though 100 percent of all stated objectives of the award agreement (or contract) may not have been fully achieved.

D. Compliance Requirements

1. In order to be paid or reimbursed as provided by the contract, companies shall be required to complete and submit to LED cost reports certifying the amount expended by the company for the training of employees for which reimbursement is sought, along with progress reports describing the company's progress toward the performance objectives specified in its contract with LEDC. Such progress reports shall include a review and certification of the company's hiring records (with copies of the company's quarterly Louisiana Department of Labor ES-4 Form filings

to be attached), and the extent of the company's compliance with contract employment commitments. Further, LED shall oversee the timely submission of reporting requirements by the company.

2. The termination of employees during the contract period who have received program-funded training shall be for documented cause only, which shall include voluntary termination.

3. In the event a company fails to meet its performance objectives specified in its contract, LEDC shall retain the right to withhold award funds, modify the terms and conditions of the award, and/or to reclaim disbursed funds from the company in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state, as determined by LED and on the recommendation of the secretary. Reclamation shall not begin unless LED has determined, with the concurrence of LEDC, after an analysis of the benefits of the training project to the state and the unmet performance objectives, that the state has not satisfactorily or adequately been compensated for its costs through the benefits provided by the training project.

4. In the event a company knowingly files a false statement in its application or in a progress report, the company may be guilty of the offense of filing false public records, and may be subject to the penalty provided for in R.S. 14:133.

5. LEDC shall retain the right, for itself, for the Legislative Auditor, for the Office of the Governor, Division of Administration, and for LED, to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:243 (February 1999), LR 25:1666 (September 1999), LR 26:243 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1067 (July 2003).

§319. Contract Monitoring

A. All monitoring will be done by LED. A portion of the fiscal year's appropriation, up to 5 percent or a maximum of \$200,000, may be used by LED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Economic Development Corporation, LR 23:46 (January 1997), amended by the Department of Economic Development, Office of the Secretary, LR 23:1643 (December 1997), LR 25:244 (February 1999), LR 25:1665 (September 1999), LR 26:244 (February 2000), amended by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1068 (July 2003).

§321. Conflicts of Interest

A. No member of Louisiana Economic Development Corporation (LEDC), employee thereof, or employee of the Louisiana Department of Economic Development (LED), nor members of their immediate families, shall either directly or indirectly be a party to or be in any manner interested in any contract or agreement with either the corporation or the department for any matter, cause, or thing whatsoever by reason whereof any liability or indebtedness shall in any way be created against such corporation or department. If any contract or agreement shall be made in violation of the provisions of this Section, the same shall be null and void, and no action shall be maintained thereon against either the corporation or the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312 and 2331, et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Business Resources Division, LR 29:1068 (July 2003).

Chapter 5. Port Development Program

§501. Purpose and Scope

A. The purpose of the program is to provide financial assistance to public port authorities for capital projects which improve or maintain waterborne commerce and intermodal port infrastructure. Under this program, the Department of Economic Development (DED) is authorized to accept and review applications from eligible port authorities for project assistance. Upon favorable evaluation and prioritization of individual projects by DED's review committee, recommendations may be made to the Secretary of Economic Development for funding qualified projects.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (August 1999), amended LR 25:1662 (September 1999), LR 26:239 (February 2000).

§503. Definitions

Applicant—the sponsoring Louisiana port authority requesting financial assistance from DED under this program.

Award—funding approved under this program for eligible applicants.

Awardee—an applicant receiving an award under this program.

Capital Projects—include any port infrastructure development project including land acquisition and attendant development costs.

Cash—any asset on the port's records used for the project. Land's value will be determined by its appraised value.

DED—Louisiana Department of Economic Development.

In-Kind—any service, land or equipment, related to the project, donated to a port outside its legal entity.

Intermodal Infrastructure Development—refers to the provision of highway, rail, water or air access; and internal trans-loading or distribution facilities to property owned and maintained by a local port authority.

Program—the Port Development Program.

Project Priority List—a list of projects proposed by eligible *applicants* ranked for program funding by the Department of Economic Development.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (August 1999), amended LR 25:1662 (September 1999), LR 26:239 (February 2000).

§505. Program Objective

A. The objectives of this program are to develop and sustain the Louisiana ports and the navigable waterways system, particularly those infrastructures that improve efficiency of the system and contribute to the location of new industry, or expansion and retention of existing industry and employment within the state.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§507. Eligibility

A. All Louisiana public port authorities are eligible to participate in the program. However, port projects that are eligible for funding under the Port Construction and Development Priority Fund administered by the Department of Transportation and Development will not be eligible for funding under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1413 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§509. Types of Projects

A. The types of projects funded under the program will include any type of port capital development projects, rehabilitation and maintenance, intermodal projects, land acquisition, site prep work and project feasibility studies that promote water transport and waterfront development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§511. Match

A. Each port authority will provide a match equal to at least 50 percent of the total cost of the project. The match may be furnished in cash or in-kind. No state funds can be used as matching funds.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§513. Application Procedure

A. Port authorities sponsoring projects are expected to provide complete and verifiable information on the proposed projects. The project information supplied should be accurate and documented in order for the department to adequately assess the merits of the project and prepare a project priority list. The sponsoring port authority must submit an application on a form provided by the department which will contain, but not be limited to the following:

1. a description of the proposed application procedure project including the nature and goals of the project, design and its major components. Justify the immediate need for the project;
2. indicate the total cost of the project. Also show the sources of funding and when they will be available;
3. provide construction, operation and maintenance plans, and a timetable for the project's completion;
4. any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§515. Submission of Applications

A. Applications must be submitted to the DED by March 1 to be considered for funding for the following fiscal year. Two copies of the application with all attachments should be submitted to the Secretary of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§517. Criteria

A. Consideration will be given to projects which have completed preliminary planning work and ensure that the project is initiated within the funding year in which the project is approved.

B. Consideration will be given to the project's contribution to regional economic development.

C. Preference will be given to projects with high employment potential and payroll.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:240 (February 2000).

§519. Project Review Procedure

A. Submitted applications will be reviewed and evaluated by a DED review committee. The committee will prepare a list of projects for funding and, if necessary, input may be required from the applicant, other divisions of the Department of Economic Development, and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and local communities;
2. validate the information presented; and
3. determine the overall feasibility of the port's plan.

B. After evaluation the review committee will submit a list of projects recommended to be eligible for funding to the Secretary of the Department of Economic Development.

C. The Secretary of DED will have the final authority in funding any recommended project under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:241 (February 2000).

§521. Funding

A. A port shall not be allocated in excess of 50 percent of the total appropriation as long as the appropriation does not exceed \$5,000,000. In the event the appropriation for the Port Development Program exceeds \$5,000,000, an individual award shall not exceed \$1,000,000 each.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1663 (September 1999), LR 26:241 (February 2000).

§523. Conditions for Disbursement of Funds

A. Grant award funds will be available to each port on a reimbursement basis following submission of required documentation to DED. Only funds spent on the project after the cooperative endeavor agreement (contract) has been agreed upon, signed and executed will be considered eligible for reimbursement.

B. Ports will be eligible for reimbursement of approved expenses up to 90 percent of the award amount. After all deliverables are completed according to the terms of the contract, the final 10 percent of the award will be made available for reimbursement.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1664 (September 1999), LR 26:241 (February 2000).

§525. Monitoring

A. All monitoring will be done by DED. A portion of the fiscal years' appropriation, up to 5 percent, not to exceed \$50,000, may be used by the DED to fund monitoring costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 39:112 and Acts 1998, No. 29, Section 1.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:1414 (August 1999), amended LR 25:1664 (September 1999), LR 26:241 (February 2000).

Chapter 7. Regional Initiatives Program

§701. Purpose

A. The purpose of the program is to stimulate regional economic development efforts by encouraging existing public and private organizations to combine financial and leadership resources to market their shared strengths to overcome their common deficits. The program serves to help create a "spirit of regional cooperation."

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§703. Definitions

Applicant—the entity requesting financial assistance from DED under this program.

Award—grant funding approved under this program for eligible applicants.

Awardee—an applicant receiving an award under this program.

DED—Louisiana Department of Economic Development.

Operating Costs—ongoing administrative, salary and travel expenses of the organization(s) applying for program funds.

Program—the Regional Initiatives Program.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§705. General Principles

A. The following principles will direct the administration of the Regional Initiatives Program.

1. Awards should be considered to be one time only funding to achieve a specific goal for a regional (multi-parish) economic development organization or coalition of organizations.

2. Grant proposals must delineate clearly what is proposed and what is to be achieved by the award.

3. Awards are not for the purpose of replacing existing costs, creating new, additional organizations, paying salaries, construction of facilities or acquisition of equipment, unless approved by the secretary.

4. Projects to be funded must augment the Louisiana Economic Development Council's plan and the objectives and strategies of DED.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§707. Eligibility

A. An eligible applicant for the Grant Award can include but is not limited to one of the following:

1. an existing regional economic development organization;
2. local chambers of commerce;
3. local economic development organizations;
4. multi-parish organizations funded by local governing authorities and the federal government with an agreement signed by parish heads of government authorizing the group to apply for funds under the Regional Initiatives Program;
5. consortium of local economic development organizations as evidenced by a written agreement to enter into a proposal for the purposes of the Regional Initiatives Program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§709. Criteria

A. Preference will be given to projects that are regional (multi-parish) in scope.

B. Projects must have a positive economic impact on at least an entire parish.

C. Preference will be given to projects that enhance, expand or are intended to foster cooperation among both public and private development entities on a regional basis.

D. Preference will be given to rural areas and to proposals from organizations not already receiving economic development funds from the state.

E. No DED award funds can be used to fund ongoing operating costs.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§711. Application Procedure

A. The applicant must submit an application on a form provided by DED which shall contain, but not be limited to, the following.

1. A narrative proposal (maximum of three pages) that states the objectives and details of the project, what is to be accomplished, the duration of the project, how the proposed project will have a positive economic impact on the parish or region and how the proposed effort will be continued beyond the funding requested.

2. Copy of letter(s) notifying the applicant's local governments, area legislators, and the prevailing economic development organization of your intent to apply for R.I.P. funding.

3. Quantifiable objectives and deliverables for the project and plans to measure the effectiveness of the project according to those objectives and deliverables.

4. A detailed budget for the project including sources of funds and letters of commitment from the funding sources as well as written commitment of the 25 percent match to be used for the project.

5. Résumé(s) of consultants involved with the project.

6. Any additional information the secretary may require.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:240 (February 1999).

§713. Submission and Review Procedure

A. Applicants must submit their completed application and proposal to the secretary of DED. Submitted applications will be reviewed and evaluated by DED staff. Input may be required from the applicant and other state agencies as needed in order to:

1. evaluate the strategic importance of the project to the economic well-being of the state and region;
2. determine whether the project's funding requirements are best met by the proposed award;
3. validate the information presented;
4. determine the overall feasibility of the applicant's plan.

B. Upon determination that an application meets the eligibility criteria for this program and is deemed to be beneficial to the well-being of the state, DED staff will then make a recommendation to the secretary. If the secretary finds the application complies with the requirements of this program, he may approve the application for funding.

1. No funds spent on the project prior to the secretary's approval will be considered eligible project costs.

2. The secretary will issue a Letter of Commitment to the applicant within five working days of the application review and approval.

3. The final 10 percent of the award amount will not be paid until DED staff reviews the deliverables of the grant agreement to assure that all work has been completed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:241 (February 1999).

§715. General Award Provisions

A. Award Agreement. A grant agreement will be executed between DED and the awardee. The agreement will specify the performance objectives and deliverables expected of the awardee and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, time lines for program completion.

B. Use of Funds

1. Any salary of the applicant related to the project is to be funded through the applicant's match.

2. Project costs ineligible for award funds include, but are not limited to:

- a. ongoing operating costs;
- b. furniture, fixtures, computers, transportation equipment, rolling stock or equipment, unless approved by the secretary.

C. Amount of Award

1. The portion of the total project costs financed by the award may not exceed 75 percent of the total project cost.

2. The applicant shall provide at least 25 percent of the total cost; 12 1/2 percent of the total project cost may be in-kind. For the purposes of this program, in-kind is the use, as a match, of the awardee's own resources to accomplish the goals of the project being funded.

3. The secretary, in his discretion, may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

D. Conditions for Disbursement of Funds

1. Upon notification of the award by the secretary, the awardee can begin spending funds on the project.

2. Award funds will be available to the awardee upon execution of a grant agreement.

3. Award funds will not be available for disbursement until:

- a. DED receives signed commitments by the project's other financing sources (public and private);
- b. all other closing conditions specified in the award agreement have been satisfied.

E. Compliance Requirements

1. The awardee shall be required to submit progress reports, as specified in the award agreement, describing the progress towards the performance objectives specified in the award agreement.

2. In the event an awardee fails to meet its performance objectives specified in its agreement with DED, DED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the awardee in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state.

3. In the event an awardee knowingly files a false statement in its application or in a progress report, the company or sponsoring entity shall be guilty of the offense of filing false public records and shall be subject to the penalty provided for in R.S. 14:133.

4. DED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records and documents of the company and the sponsoring entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2341 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:241 (February 1999).

Chapter 9. Louisiana Industrial Training Program

§901. Eligibility

A. Applicant must be a manufacturing firm.

B. Applicant must apply for a minimum of 10 net-new, permanent manufacturing jobs that are classed as entry-level unskilled.

C. Applicant must assign a supervisor/instructor to at least 10 trainees.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§903. Preference

A. Preference will be given to applicants locating in a parish which has an unemployment rate higher than the state average.

B. Secondary preference will be given to companies in targeted Standard Industrial Classification (SIC) Codes. The target industries for any particular fiscal year shall be determined by the Secretary of Economic Development in June of each year.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§905. Method and Timing of Application

A. An application shall be submitted for approval to the development supervisor for the Department of Economic Development, Office of Commerce and Industry.

B. The application shall include a manning table setting forth job titles, number of employees per job title and hourly wage per job title. A maximum of 10 percent deviation in the proposed manning table will be allowed.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§907. Contract and Monitoring

A. A contract shall be executed between the state of Louisiana and a local approved non-profit economic development organization from the same geographical area as the site location of the applicant on behalf of the applicant industry.

B. The nonprofit corporation shall monitor the progress of training under the contract and report to the development supervisor who shall also monitor the progress of the training.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§909. Method of Payment

A.1. Payment to the non-profit monitor shall be reimbursable from an invoice which shows:

- a. name of supervisor(s);
- b. Social Security number;
- c. number of weeks worked; and
- d. weekly rate.

2. Instructors will be paid for a maximum of 40 hours per week.

B. All invoices shall be accompanied by a statement which shows:

1. names of trainees;
2. Social Security number;
3. employment status at time of hiring;
4. sex;
5. race;
6. previous wage rate; and
7. current wage rate.

C. Invoices shall be submitted at the end of the training period if that period is seven weeks or less. Invoices shall be submitted monthly if the training period is seven weeks or more.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§911. Location of Training

A. All training locations shall be in Louisiana.

B. Exceptions to this may be made at the discretion of the Secretary of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

§913. Amount of Training Grants

A. On-the-job training grants will be calculated at \$200 per job.

B. Pre-employment training grants will not exceed \$70,000.

C. Exceptions to this may be at the discretion of the Secretary of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Commerce and Industry, LR 15:619 (August 1989), amended LR 16:762 (September 1990).

Chapter 11. Local Economic Development Support Fund

§1101. Definitions

Urban—an organization, the service area of which includes a parish with a population of 50,000 or over.

Rural—an organization, the service area of which includes no parish with a population of 50,000 or over.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

§1103. Urban

A. Applicant. Applicant organization may not be a tax levying body.

B. Staff. Must employ professional full-time executive director. Must submit résumé and evidence of employment by applicant organization.

C. Service Area

1. If organization has been active for the past three years and has had no change in service area during that time, a list of parishes and/or cities served must be submitted.

2. If applicant has been organized during past three years, evidence of acceptability to parish/local government must be presented. This may take the form of a resolution, a letter of approbation from the chief elected official, evidence

that elected officials sit (by virtue of their position) on the board of the applicant and/or evidence that dues are paid or contributions made by local governing bodies to the applicant organization.

D. Budget

1. A budget, developed according to state guidelines, covering use of the grant for the negotiated scope of work must be submitted and will be made part of the contract. Monies received through the LEDS program may constitute no more than 50 percent of the current budget of the organization. Satisfactory evidence of this ratio must be submitted at the time of application and at the time of the fourth quarter financial report.

2. No monies received under this program shall be used for acquisitions.

3. At the discretion of the Department of Commerce, up to 75 percent of the monies may be used for one major project.

E. Authorization to Enter into Contract. A resolution from the board of the applicant organization must be submitted authorizing entering into contract and naming signator.

F. Scope of Work. Performance standards for all tasks shall be made part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

§1105. Rural

A. Applicant. Applicant may not be a tax levying body.

B. Staff. May employ professional full-time executive director or may contract for work. Must submit résumé and evidence of employment by applicant organization. If full-time employee or contract employee not applicable, must submit evidence of capability of completing contracted scope of work.

C. Service Area

1. If organization has been active for the past three years and has had no change in service area during that time, a list of parishes and/or cities served must be submitted.

2. If applicant has been organized during past three years, evidence of acceptability to parish/local government must be presented. This may take the form of a resolution, a letter of approbation from the chief elected official, evidence that elected officials sit (by virtue of their position) on the board of the applicant and/or evidence that dues are paid or contributions made by local governing bodies to the applicant organization.

D. Budget

1. A budget, developed according to state guidelines, covering use of the grant for the negotiated scope of work must be submitted and will be made part of the contract. If the organization is one year old or less, monies received

through the LEDS program may constitute no more than 75 percent of the current 1987 budget of the organization. If the organization is between one and two years old, the monies may constitute no more than 65 percent of the budget. If the organization is three years old or older, the monies may constitute no more than 50 percent of the budget. Satisfactory evidence of this ratio must be submitted at the time of application and at the time of the fourth quarter financial report.

2. No monies received under this program shall be used for acquisitions.

3. At the discretion of the department, up to 75 percent of the monies may be used for one major project.

E. Authorization to Enter into Contract. A resolution from the board of the applicant organization must be submitted authorizing entering into contract and naming signator.

F. Scope of Work. Performance standards for all tasks shall be made part of the contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:921 et seq.

HISTORICAL NOTE: Promulgated by the Department of Commerce, Office of Commerce and Industry, LR 10:741 (October 1984), amended LR 12:663 (October 1986).

Chapter 15. Louisiana Project Equity Fund

§1501. Purpose

A. The purpose of this program is to promote and enhance Louisiana Department of Economic Development's cluster development, the goals of Vision 20/20, Louisiana's long-term plan for economic development, and related public policy for the introduction, growth and retention of Louisiana businesses by providing loan funding for defined business projects. The Louisiana Economic Development Corporation ("LEDC") in accordance with R.S. 51:2301 et seq. and R.S. 51:2341 and these rules may provide loan funding to companies on a project basis for the purchase of capital equipment, and accompanying necessary inventory and/or technology that introduce innovative development or production of products in Louisiana and that serve to enhance industry clusters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2636 (December 2003).

§1503. Definitions

Applicant—the public entity requesting the loan funding from the Louisiana Project Equity Fund for equipment and other materials to be owned by the public entity during the pendency of the loan and to be utilized by the company for the project.

Award—the funding of the loan from the LEDC under this program to eligible applicants.

Company—a legal entity that is duly authorized to do and doing business in Louisiana in need of loan funding for a project pursuant to these rules.

LED—the Louisiana Department of Economic Development charged by statute with administering the Project Equity Fund and the LED cluster directors and assigned staff shall administer the fund provided for by these rules.

LEDC Board—the board of directors of the Louisiana Economic Development Corporation and when referred to herein in terms of approval of an award, shall mean that the award has been approved in accordance with the by-laws and procedures of the board of directors whether such approval requires or does not require board approval under those by-laws and procedures.

Loan Agreement—the loan agreement of contract hereinafter referred to between DED, LEDC, company and applicant through which the parties by cooperative endeavor or otherwise, including attached or referenced promissory notes, securitization, lease or other appropriate documentation necessary to conventionally protect the interest of the LEDC in the funding of the loan, set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

Project—the undertaking of the applicant and company for which a loan pursuant to these Project Equity Fund rules are sought and includes introduction of innovative development or production of products to the state of Louisiana that furthers and promotes the development of cluster industries and businesses through the loan funding of capital equipment, accompanying necessary inventory and/or technology that causes and/or enhances the operation of such equipment and results in increased economy and efficiency in Louisiana products.

Secretary—the secretary of the LED, who is also the president of LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2636 (December 2003).

§1505. General Principles

A. The following general principles will direct the administration of the Louisiana Project Equity Fund.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana and are subject to the discretion of the LED, the secretary of the LED and the LEDC.

2. An award must reasonably be expected to be a significant factor in improving or enhancing economic development, including cluster development, whether in a particular circumstance, or overall.

3. Awards must reasonably be demonstrated to result in the enhanced economic well-being of the state and local communities.

4. Awards that promote retention and strengthening of cluster development of existing businesses will be evaluated using the same procedures and with the same priority as the recruitment of new businesses to the state.

5. The anticipated economic benefits to the state will be considered in making the award.

6. Whether or not an award will be made is entirely at the discretion of the LED, its cluster directors, the secretary and the LEDC board and shall depend upon the facts and circumstances of each case, funds available, funds already allocated, and other such factors as the board may, in its discretion deem to be pertinent. The grant or rejection of an application for an award shall not establish any precedent and shall not bind the LED, its cluster directors, the secretary, or the LEDC board to any future course of action with respect to any application.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2637 (December 2003).

§1507. Eligibility

A. In order to be eligible for a Project Equity Funding Award pursuant to this program, the applicant and company must demonstrate to the satisfaction of the board that the award sought must be consistent with the principles set forth above, and the applicant and company must demonstrate a need for the project funding consistent with the requirements set forth below. Where it is represented that certain contingent actions will be taken in order to comply with these conditions, then the LEDC may, upon recommendation of the LED and its contract monitor, withhold funding until there is substantial performance of the contingencies.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2637 (December 2003).

§1509. Application for Project Funding

A. The applicant and the company must jointly submit an application to the LED through its assigned staff and cluster director(s) responsible for the business area that will be subject to the project for which the lending is being sought, in proposal form which shall contain the following information:

1. a business plan providing:
 - a. a detailed description of the project to be undertaken, particularly:
 - i. the project manufacturing materials and equipment; and/or

ii. technology for which the funding is sought; and

iii. the economic scope of the investment involved in the project;

b. cash flow analysis of the project providing detailed support for the use of the funding provided;

c. the nature of the treatment of the funding in the business plan and cash flow analysis for the project, including a payment schedule for the loan that is consistent with the revenues generated by the innovative manufacturing or technology that is funded for the project;

2. a description of the project:

a. the capital equipment, accompanying necessary inventory and/or technology that causes and/or enhances the operation of the equipment;

b. the product being produced in the state of Louisiana as a result of the project;

c. the innovative, efficient and/or economical nature (to Louisiana) of the process of production that will result from the project;

d. a description as to how the project furthers and promotes the development of cluster industries and businesses and will enhance the economic viability of the state and region of the state in which the project is located;

3. a description of the applicant local government entity and the company and the nature of the ownership by the applicant and agreed to by the company, including a schedule for the transfer of ownership from the applicant to the company upon fulfillment of the repayment obligations of the company to the LEDC.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2637 (December 2003).

§1511. Loan Funding

A. All funding applications must be considered by the board after review by the assigned staff and upon recommendation of the relevant cluster director and the secretary. Thereafter, the LEDC board upon such review as may be necessary to make the determination as to the application in accordance with these rules shall either approve or disapprove the application. Upon approval by the LEDC Board:

1. the loan shall be funded pursuant to the loan agreement;

2. the credit provided shall be drawn down in accordance with the schedule provided as approved by the cluster director, secretary and LEDC and incorporated into the loan agreement;

3. the loan agreement shall include appropriate enforceable provisions for the monitoring of the contract;

4. the loan agreement shall include such conventional provisions as may be appropriate to protect and secure the loan funding provided by the LEDC board pursuant to these rules;

5. the cluster director making the recommendation for the loan funding shall be designated by the LEDC as the contract monitor for the loan agreement, and the contract monitor shall, on a semi-annual basis, report to the LEDC board on the status and progress of the project.

AUTHORITY NOTE: Promulgated in accordance with R.S. 51:2312(B) and (D)(1) and R.S. 51:2341(B).

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of Business Development, Louisiana Economic Development Corporation, LR 29:2638 (December 2003).

Title 13
ECONOMIC DEVELOPMENT
Part V. Office of the Secretary

**Chapter 1. Substance Abuse and
Drug-Free Workplace Program**

§101. Philosophy

A. The Department of Economic Development is totally committed to deterring substance abuse or use which imperils the health and well-being of our employees and the citizens of this state. To accomplish this, DED hereby adopts these Substance Abuse and Drug-Free Workplace rules which will enhance the safety and welfare of our employees, increase overall productivity and the quality of our service to the public, preserve property and equipment, promote public safety, reduce absenteeism and job-related accidents which, in turn, will improve the image and reputation of our department and employees.

B. DED's philosophy is consistent with the state of Louisiana's long-standing commitment to establishing a drug-free workplace. To deter the use of illegal drugs by employees of the state of Louisiana, the Louisiana Legislature enacted laws which provide for the creation and implementation of drug testing programs for state employees. Further, the governor of the state of Louisiana issued Executive Order MJF 98-38 providing for the promulgation, by executive agencies, of written policies mandating drug testing of employees, appointees, prospective employees and prospective appointees in accordance with R.S. 49:1001, et seq. This department fully supports these actions and is committed to a drug-free workplace.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:414 (March 1999).

§103. Applicability

A. These rules apply to all employees and appointees of this department, as well as potential employees, potential appointees (excluding appointed members of boards and commissions and individuals providing service to this department through a contract with a third party employer, i.e., temporary agency employees), and all other persons having an employment relationship with the department, whether classified, unclassified, student employees, student interns, full-time, part-time or temporary [hereinafter "employee(s)" unless otherwise noted].

B. These rules do not apply to the Louisiana Racing Commission which will amend its current rules to include the provisions set forth in Executive Order 98-38.

C. Following a job offer, potential employees and potential appointees will be required to submit to pre-employment drug testing. All employees are subject to post-accident/incident, reasonable suspicion and return-to-duty/rehabilitation monitoring drug and alcohol testing. Employees who occupy safety-sensitive positions and applicants who apply for safety-sensitive positions are subject to both random and pre-selection drug and alcohol testing. Finally, prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position, an employee is required to undergo drug and alcohol testing. A list of the safety-sensitive positions within this department is attached as §121, Appendix A.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:414 (March 1999).

§105. Requirements

A. To maintain a safe and productive work environment, all DED employees are required to:

1. report for duty in the physical and emotional condition which maximizes his/her ability to perform assigned tasks in a competent and safe manner;
2. promptly and cooperatively submit to drug/alcohol testing when required by a supervisor or appointing authority;
3. notify a supervisor on the first scheduled workday following any arrest or conviction for DWI, drug or drug-related offense which occurs on or off-duty.

B. DED prohibits the use, abuse and presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in the bodies of its employees while on duty, scheduled on-call or engaged in DED business, on or off DED/state premises. The presence of unauthorized alcohol, illegal or unauthorized drugs, and other prohibited substances in a state vehicle while on or off duty is also prohibited.

1. The presence of alcohol is indicated by a confirmed blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood.

2.a. Illegal or unauthorized drugs include:

- i. any drug which is not legally obtainable;
- ii. any drug which is legally obtainable, but has been illegally obtained;

iii. prescription drugs not being used in accordance with the prescription;

iv. or any substance which affects the employee's ability to safely and competently perform assigned duties.

b. Controlled dangerous substances are listed in Schedule I, II, III, IV and V of R.S. 40:964.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

§107. Drug/Alcohol Testing

A. All employees may be required to submit to drug and/or alcohol testing as a condition of employment, as a condition of continued employment, or as a condition of promotion, demotion, reassignment or detail to a safety-sensitive position. Whether announced or unannounced, tests will be administered under the following circumstances.

1. Pre-Employment. Drug tests are required of all prospective employees and appointees of this department. Each prospective employee/appointee shall be required to submit to drug screening at the designated time and place following a job offer. Pursuant to R.S. 49:1008, a prospective employee/appointee testing positive for the presence of a prohibited substance shall be eliminated from consideration for employment. Additionally, applicants for safety-sensitive positions listed in §121 shall be required to submit to alcohol testing. Applicants who test positive for the presence of alcohol shall be eliminated from consideration for employment.

2. Post-Accident/Incident. An employee may be subject to drug testing following an on-duty accident where there is reasonable suspicion that the employee was under the influence of drugs or alcohol. *Reasonable suspicion* is a belief, based upon reliable, objective and articulable facts derived from direct observation of specific physical and behavioral characteristics (behavior, speech, appearance, odor), which causes a prudent person to suspect that an employee has engaged in drug or alcohol use. Only an appointing authority shall require an employee to submit to post-accident/incident testing. Generally, this decision will be based upon the recommendation of supervisory personnel at the scene who have objectively and thoroughly reviewed the circumstances of the accident/incident. The supervisor will fully document the facts upon which the recommendation for testing is made. Any employee directly involved in an on-duty accident shall be required to submit to drug and alcohol testing if:

a. the accident involves circumstances giving rise to a reasonable suspicion that the accident may have involved the employee's drug or alcohol use and the employee's action or inaction may have been a causative factor;

b. the accident meets the criteria of Paragraph (a) and results in or causes the release of hazardous waste as defined by R.S. 30:2173(2) or hazardous materials as defined by R.S. 32:1502(5); or

c. the accident results in a fatality or serious bodily injury.

NOTE: When post-accident/incident testing is ordered, a departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

3. Random. Random alcohol and drug testing is required of all employees holding safety-sensitive positions as listed in §121. Such testing shall be periodic and unannounced, and employee selection therefor shall be by a computer-generated random selection process. All such testing shall, unless impracticable, occur during the employee's normal work hours.

4. Promotion/Reassignment/etc., to Safety-Sensitive Position. Current employees are required to undergo drug and alcohol testing prior to being reassigned, temporarily detailed, promoted or demoted to a safety-sensitive position as defined in §121. An offer of promotion, reassignment, detail or demotion will be withdrawn if a positive drug or alcohol test result is reported, and employees are further subject to disciplinary action as specified in these rules.

5. Reasonable Suspicion. An employee shall be required to submit to drug and alcohol testing when he/she exhibits behavior or appearance that is characteristic of drug or alcohol use. The decision to test will be by an appointing authority based upon reliable, objective and articulable facts derived from direct observation of the employee's physical appearance, behavior, speech, body odor or physical manifestations. The observation must be made by supervisory personnel (two, if possible) who shall record, in writing, the observations leading to the recommendation for testing.

NOTE: When reasonable suspicion testing is ordered, a departmental representative shall transport the individual being tested to and from the testing site. Under no circumstance should any employee who is reasonably believed to be impaired or under the influence of any drug or alcohol be permitted to operate a motor vehicle.

6. Return-to-Duty/Rehabilitation Monitoring. Any employee who retains his/her job following a violation of these rules shall be required, at his/her own expense, to undergo and complete any and all treatment recommended by a certified substance abuse professional. Any such employee shall be subject to periodic drug/alcohol testing. Further, any employee who voluntarily or, as a condition of continued employment, participates in an alcohol/substance abuse rehabilitation program, shall be subject to random drug/alcohol testing for a minimum of one year or longer as determined by the treating substance abuse professional. Any such employee shall be required to certify, in writing, his/her understanding and acceptance of such a rehabilitation agreement as a condition of returning to work.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:415 (March 1999).

§109. Drug Testing Procedures

A. Drug testing pursuant to these rules shall be for the presence of marijuana, opiates, cocaine, amphetamine/methamphetamine and phencyclidine (PCP) in accordance with R.S. 49:1001, et seq. Testing shall be performed by a contractor chosen by the Office of State Purchasing, Division of Administration. At a minimum, the testing procedure shall assure:

1. that all specimens for drug testing are collected, stored, transported and tested in compliance with United States Department of Health and Human Services (DHHS) guidelines (and applicable federal and state regulations) to ensure integrity of the testing process;

2. urine specimens will be collected with emphasis upon the privacy rights of the employee. Direct observation of the employee during collection of the urine specimen will be allowed only under the following conditions:

a. when there is specific, articulable reason to believe that the individual may alter or substitute the specimen;

b. when the individual has provided a urine specimen which falls outside the acceptable temperature range;

c. when the last urine specimen provided by the individual was verified by the Medical Review Officer as adulterated; or

d. when collection site personnel observe conduct or behavior indicating an attempt to substitute/adulterate the sample or otherwise alter the integrity of the collection process;

NOTE: In all instances in which direct observation is deemed appropriate, the designated DED representative shall review and concur, in advance, with any decision by collection site personnel to obtain a specimen under direct observation. This representative shall maintain, in a confidential record, the full name of the reporting collection site personnel and the specific facts relied upon to approve the direct observation. The record shall be signed by the department representative. All direct observations shall be conducted by same gender collection site personnel.

3. the split sample collection methodology must be used in accordance with R.S. 49:1006.D, with both the primary and split specimens properly stored and transported to the testing laboratory. The primary urine sample will be analyzed for the presence of marijuana, opiates, amphetamines/methamphetamine, cocaine and phencyclidine (PCP);

4. appropriate chain of custody forms shall be utilized to ensure the integrity of each urine specimen by tracking its handling, storage and transportation from point of collection to final disposition;

5. testing shall be performed by laboratories certified for forensic urine drug testing by the U.S. Department of Health and Human Services and in strict compliance with DHHS Guidelines;

6. the dual testing procedure shall be used for all samples. Each primary sample that tests positive for a prohibited substance shall be subject to an additional, more precise confirmatory test (gas chromatography/mass spectrometry);

7. all positive test results (those which exceed federally established cut-off levels as set forth in 49 CFR 40, Section 40.29), shall first be reported by the testing laboratory to DED's qualified Medical Review Officer (MRO). The MRO is a licensed physician knowledgeable of substance abuse who has received specialized training in interpreting and evaluating test results in conjunction with an individual's medical history and other relevant biomedical information. The MRO will review the collection procedure, chain of custody and testing methodology before contacting the employee/appointee/applicant to rule out the possibility of error or that medications, medical history or any other condition caused the positive test result;

8. if the test is confirmed to be positive by the MRO, the employee may, within 72 hours of notification from the MRO, request, in writing, directly to the MRO, that the split specimen (initially collected but separated and stored during the collection process) be tested in a different DHHS certified laboratory. This split sample testing shall be allowed if timely requested and performed at the employee's expense;

9. once a positive test is confirmed and reported to DED by the MRO, an employee in a safety-sensitive position will be prohibited from performing safety-sensitive functions. A request for testing of the split sample will not delay any such employee's removal from performing safety-sensitive functions; and

10. if testing of the split specimen results in a negative result, the MRO will cancel the positive result of the initial test. All doubts shall be resolved in favor of the employee.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:416 (March 1999).

§111. Alcohol Testing Procedures

A. Evidential Breath Testing Devices (EBT) approved by the National Highway Traffic Safety Administration will be used by certified Breath Alcohol Technicians to determine the presence of alcohol in the employee's system.

B. The employee will be advised of the results of the breath screening test. No further testing will be required if the test results are negative. If the screening test is positive for the presence of alcohol, a confirmation test will be performed within 20 minutes, but not less than 15 minutes of completion of the screening test. If the confirmatory test indicates a blood alcohol concentration of 0.05 percent or more by weight based upon grams of alcohol per 100 cubic centimeters of blood, the results will be reported as positive to DED's designated representative.

C. An employee occupying a safety-sensitive position will be immediately removed from performing safety-sensitive functions in the event of a positive alcohol test.

D. Positive test results will also be reported to the appointing authority whenever an employee refuses to complete or sign the breath alcohol confirmation testing form, provide breath or an adequate amount of breath (excluding medical inability), or fails to cooperate with the testing procedure in any way that prevents completion of the test.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§113. Enforcement

A. The use of illegal drugs, unauthorized alcohol and other controlled or unauthorized substances will not be tolerated. Substance abuse endangers the health and well-being of our employees, prevents quality service to the public and is inconsistent with this department's mission. While the department's position is firm, we will resolve any reasonable doubt regarding the testing procedure or results in the employee's favor.

B. Disciplinary action will be taken after a complete and thorough review of the applicable data in accordance with Chapter 12 of the Civil Service rules. Employees will be provided pre-deprivation notice and a meaningful opportunity to respond prior to the imposition of disciplinary action.

C. Penalty for a First Positive Test. A first positive test (drug or alcohol) will result in disciplinary action up to and including the possibility of termination. Factors to be considered in determining the appropriate sanction include, but are not limited to, the employee's work history, length of service, current job performance and the existence of prior disciplinary action. At a minimum, the first-time offender will remain off from work at least 30 calendar days. For any such period, the first 10 workdays will be a suspension, without pay. For the remaining 20 days, the employee will be permitted to use annual, sick or compensatory leave, if available. During this 30-day period, the employee shall obtain a substance abuse evaluation and commence any recommended rehabilitative treatment. Refusal to participate in the evaluation/treatment process, at the employee's expense, will result in termination.

D. Termination will be the recommended penalty for the following violations:

1. second positive drug test result or confirmed blood alcohol level above the applicable thresholds;
2. refusal to submit to a drug or alcohol test;
3. failure to cooperate in any way which prevents the completion of a drug or alcohol test;
4. submission of an adulterated or substitute sample for testing;

5. buying, selling, dispensing, distributing or possessing unauthorized alcohol or any illegal or unauthorized substance while on duty, in a state vehicle or on DED/state premises; and

6. operating a state vehicle or personal vehicle while on duty under the influence of drugs or alcohol where testing administered by an authorized official confirms a violation of these rules.

E. Suspension will be the recommended penalty for the following violations:

1. failure to notify a supervisor of an off-duty arrest or conviction of DWI or drug-related offense at the beginning of the next scheduled workday.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§115. Confidentiality/Employee Rights

A. All drug and alcohol testing results and records (including all information, interviews, reports and statements) are considered confidential communications, pursuant to R.S. 49:1012, and may not be used or received in evidence, obtained in discovery, or disclosed in any public or private proceeding, except in an administrative or disciplinary proceeding or civil litigation where drug use by the tested individual is relevant. Exceptions to these confidentiality provisions are limited to:

1. written employee consent;
2. federal agencies when licensure or certification actions are required;
3. to a decision-maker in arbitration, litigation or administrative proceedings arising from a positive drug test;
4. and as otherwise required by law.

B. In compliance with R.S. 49:1011, any employee, upon learning of a confirmed positive test result, shall, upon written request, have the right of access, within seven working days, to records and other documentation relating to the drug testing process and any records relating to the results of any relevant certification, review, suspension/revocation proceedings of the testing facility.

C. Employees should know that statistical records and reports of drug testing are maintained by DED, contract physicians and drug testing laboratories. This information is aggregate data and is used to monitor compliance and to assess the effectiveness of the drug testing program.

D. This department has no interest in informing law enforcement authorities of a positive drug test. However, nothing contained in these rules will be construed to preclude the delivery of any illegal drug, controlled dangerous substance, or other substance prohibited by these rules, discovered in/on DED/state property, or upon the person of a DED employee, to law enforcement officials. Likewise, any employee engaged in the sale, attempted sale,

distribution or transfer of illegal drugs or controlled substances while on duty or on DED/state property shall be referred to appropriate law enforcement authorities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:417 (March 1999).

§117. Employee Assistance Program (EAP)

A. Early recognition and treatment of drug abuse or dependency are essential to successful rehabilitation. Employees experiencing a substance abuse problem are encouraged to seek assistance from the Department's EAP Coordinator within the Human Resources Division. Any such involvement will be held in strict confidence, but employees should know that supervisors and appointing authorities (who need to know) will be kept abreast of the employee's treatment and leave needs.

B. Employees referred to the EAP Coordinator by supervisory personnel or who, as a condition of continued employment, participate in a substance abuse rehabilitation program will be subject to the Return-to-Duty/Rehabilitation Monitoring testing set forth in these rules.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

§119. General Provisions

A. DED reserves the right to have a licensed physician, of its own choosing and at its own expense, determine if use of prescription medication produces effects which impair the employee's performance or increase the risk of injury to the employee or others. In such case, DED will modify the employee's customary job duties or work activities for the period the employee is unable to safely perform his/her customary job duties. Alternatively, the employee may be required/permitted to use accrued leave.

B. Although the substance abuse testing defined in these rules is restricted to five specified drugs and alcohol, DED reserves the right to require employees to submit to additional testing, if warranted. Such tests will only be administered when post-accident or reasonable suspicion testing produce negative results and the employee's behavior clearly indicates impairment or other indicia of substance use. Separate samples will be collected for these additional tests and the testing process will fully comply with DHHS regulations.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

§121. Appendix A

No safety sensitive positions at this time.

AUTHORITY NOTE: Promulgated in accordance with R.S. 49:1015 et seq.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 25:418 (March 1999).

Chapter 2. Governor's Economic Development Rapid Response Program

§201. Purpose

A. The purpose of the program is to provide for immediate funding of all or a portion of economic development projects in order to successfully secure the creation or retention of jobs by a business entity in Louisiana under such circumstances as may be determined by the Secretary of Economic Development and the governor of Louisiana.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005).

§203. Definitions

A. The following definitions shall be applicable to this program.

Applicant(s)—the company or business entity, that pursuant to applicable Louisiana law, is duly authorized to do business in Louisiana and is in good standing as certified by the office of the Louisiana Secretary of State, and/or any public entity requesting financial assistance from LED under this program that represents the set of circumstances through which funding may be applicable under these rules.

Award—funding of financial assistance, which may include loan guaranties, for eligible applicants under this program.

Award Agreement—the contract between the company and/or the public entity, and LED through which, by cooperative endeavor, loan guaranty agreement, or otherwise, the parties set forth the terms, conditions and performance objectives of the award provided pursuant to these rules.

Company—a company or business entity, duly authorized to do business in Louisiana and in good standing as certified by the Louisiana Secretary of State, that pursuant to these rules may be eligible to seek the funding of a project.

Department—the Louisiana Department of Economic Development.

Economic Development Project—the undertaking for which an award is granted that, under the circumstances presented, provides the opportunity for immediate funding of a project or portion of a project that will serve to finalize the commitment of a business entity to either the creation or retention of jobs in Louisiana.

LED—the Louisiana Department of Economic Development.

Program—the Governor's Economic Development Rapid Response Program that is undertaken by LED, pursuant to these rules and an award agreement with the applicant(s) that serves the purposes of obtaining or retaining an Economic Development Project.

Project—economic activity that, in whole or in part, as determined by the Secretary of Economic Development and the governor of Louisiana, will result in the creation or retention of jobs and for which assistance is requested under this program as a decisive influence in the decision of an entity to locate in Louisiana, maintain or expand its Louisiana operations, or increase its capital investment in Louisiana in such a manner as will create or retain jobs.

Public Entity—the public or quasi-public entity that pursuant to these rules, may be eligible to seek funding or a loan guaranty for a project or that may, with a company, apply for funding or a loan guaranty pursuant to these rules or that, pursuant to the request of LED, may be responsible for engaging in the award agreement and pursuant thereto, for the performance and oversight of the project and for supervising with LED the company's compliance with the terms, conditions and performance objectives of the award agreement.

Secretary—the Secretary of the Department of Economic Development.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:420 (February 2005).

§205. General Principles

A. The following general principles will direct the administration of the governor's Economic Development Rapid Response Program.

1. Awards are not to be construed as an entitlement for companies locating or located in Louisiana and the secretary and governor have the discretion to determine whether or not each particular application meets the primary criteria for the award as provided herein, and in all such circumstances, the exercise of that discretion shall be deemed to be a final determination of award status.

2. The economic benefit of the award to the state must equal or exceed the value of the award to the recipient.

3. The immediate nature of the award, and the competitive circumstances, as well as the need for and immediate use of the funds or loan guaranty granted pursuant to the award must reasonably be expected to be the significant factor in a company's location, investment, retention and/or expansion decisions, and the award agreements entered into pursuant to this program shall reflect a commitment by the recipient of the award to the creation and retention of jobs and other economic

consequences as represented in the application for the award and shall include such provisions as will protect the state's investment in the award in the event that the recipient of the award fails to meet its representations.

4. The state anticipates negotiating with each company seeking an award based on the individual merits of each project, with the goal of seeking the best return on investment for the state's citizens over the longest possible period of time.

5. Contracts for awards will contain "clawback" (or refund) provisions to protect the state in the event of a default.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005).

§207. Eligibility

A. An eligible application for the award must meet the general principles set forth above and the criteria set forth below.

B. A company shall be considered ineligible for this program if it has pending or outstanding claims or liabilities relative to failure or inability to pay its obligations, including state or federal taxes, a bankruptcy proceeding, or if it has pending, at the federal, state, or local level, any proceeding concerning denial or revocation of a necessary license or permit, or if the company has another contract with LED in which the company is in default and/or is not in compliance.

C.1. Businesses not eligible for awards under this program are:

- a. retail business operations;
- b. real estate developments;
- c. hospitality operations; or
- d. gaming operations.

2. This provision shall not apply, however, to wholesale, storage warehouse or distribution centers; catalog sales or mail-order centers; home-office headquarters or administrative office buildings; even though such facilities are related to the above business enterprises, provided that retail sales, hospitality services and gaming activities are not provided directly and personally to individuals in any such facilities.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005).

§209. Criteria

A. These rules seek to maximize both the economic development from a particular award pursuant to this program and to more efficiently utilize taxpayer money in pursuing the goals of economic development.

B. Among the factors that may be taken into account in the review of award requests are the following:

1. actual local governmental commitment to the project (including sharing of responsibility for the company's compliance with the terms and conditions of the award);
2. availability of other federal, state, local or private funding programs for the project;
3. jobs created, jobs retained, company investment prior to the request for the project and company commitment to match funds that will equal or exceed the amount of the grant;
4. company membership in and utilization of cooperative organizations for industry best practices and improvement;
5. evaluation of overall industry performance in the context of the goals of *Louisiana: Vision 2020*;
6. compelling evidence that the award, if granted, will retain or create jobs and that the award, when committed and implemented, needs immediate funding and is the final necessary commitment to secure the project;
7. the period of time that the company will commit to maintain its new and/or retained jobs; and
8. the terms of the "clawback" (or refund) provisions, in the event of a default.

C. Representation as to the applicant's need for the funds, as well as the ability to put the funds to use after the award is granted will also be an important consideration in the grading of a particular application. Entry into a contractual agreement and the use of the funds within a specified period after the award is granted will be a factor in the department's recommendation to the governor as to conditions for the award.

D. The department will pursue a policy of negotiation of the award with the award applicant in order to assure that only necessary funds that are supported by evidence of need, availability and use, as well as commitment to, and likely success of the project, will arise from the final approval of the project in accordance with departmental recommendations upon which the award is conditioned and will be administered by the department.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:421 (February 2005).

§211. Application Procedure

A. The applicant(s) must submit an application to LED which shall contain, but not be limited to, the following:

1. an overview of the company, its history, and the business climate in which it operates, including audited or certified financial statements and business projections;

2. preliminary or final construction, operation or other plans and a timetable for the project, including the time period for which the rapid response funding is necessary;

3. evidence as to the need for immediate funding;

4. a detailed description of the expenditure of funds sought for the project;

5. evidence of the number, types and compensation levels of jobs to be created, and/or the number, types and compensation levels of jobs to be retained by the company in connection with the project, and the amount of capital investment to be made for the project;

6. details of the health insurance coverage that is or will be offered to employees at all levels of the company;

7. the period of time for which the company will commit to maintain the new and/or retained jobs;

8. the application must demonstrate adherence to and overall consistency with the general principles and criteria set forth above; and

9. the application is to set forth facts and representations that in addition to those required by Paragraphs 1 through 8 above, fulfill the general principles of §205, the eligibility requirements under §207, and meet the criteria set forth in §209 above, in order to qualify for an award under this program.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005).

§213. Submission and Review Procedure

A. Applicants must submit their completed application to LED. Submitted applications will be reviewed and evaluated by LED staff. Input may be required from the applicant, cluster directors, other staff of the Department of Economic Development and other state agencies as needed in order to evaluate the project in the context of these rules and with respect to the overall economic well-being of the state and local communities. LED may determine that advice of a third party may be appropriate to its analysis of the application and may undertake such a review as part of this procedure.

B. An economic cost-benefit analysis of the project, including an analysis of the direct and indirect net economic impact and fiscal benefits to the state and local communities will be prepared by LED and must establish that the award hereunder is in accordance with the requirements of Article VII, Section 14 of the Louisiana Constitution.

C. Upon determination that an application meets the general principles of §205, the eligibility requirements under §207, and meets the criteria set forth for this program under §209, LED staff will then make a recommendation to the governor. The application will then be reviewed and approved or rejected by the governor.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005).

§215. General Award Provisions

A. Agreement resulting from the expedited procedures for the award shall demonstrate the intent of the company, the public entity, and LED to enter into an Award Agreement consistent with the constitution and laws of the state of Louisiana and with these rules.

1. An Award Agreement will be executed between LED and the applicant, and may include as a party the public entity through which the funding is to be administered. The agreement will specify the performance objectives expected of the company and/or the public entity and the compliance requirements to be enforced in exchange for state assistance, including, but not limited to, commitments as to job retention and/or to time lines for investment and job creation. Under the agreement, the public entity or LED will oversee the progress of the project. LED will disburse funds to the public entity and/or company in a manner determined by LED and there shall be appropriate securitization of the award in a manner consistent with normal commercial practices.

2. Eligible project costs may include an advance of funds to provide the necessary commitment that will, in the opinion of the LED and governor, provide for the project and may include matters that in whole or in part provide for engineering and architectural expenses; site acquisition costs; site preparation costs; construction expenses; building materials; office expenses including furniture, fixtures, computers, consumables, transportation equipment, rolling stock or equipment; relocation expenses; training expenses, including pre-employment training, assessments, classroom training, on-the-job training, and other justifiable training expenses; and any other costs. Commitment to funding of these costs may be made, provided that the entity receiving these funds shall comply with the Public Bid Laws to the extent that such laws are applicable.

3. Project costs ineligible for award funds include, but are not limited to, matters such as the refinancing of existing debt, public or private, and expenses already approved for funding through the General Appropriations Bill, or for cash approved through the Capital Outlay Bill, or approved for funding through the state's capital outlay process for which the Division of Administration and the Bond Commission have already approved a line of credit and the sale of bonds.

4. LED and/or the governor may limit the amount of awards to effect the best allocation of resources based upon the number of projects requiring funding and the availability of program funds.

5. Award funds will be available to the public entity and/or company on a reimbursement basis following submission of required documentation to LED as set forth in the Award Agreement between the parties.

6. Award funds will not be available for disbursement until:

a. the LED and the applicant(s) have entered into an Award Agreement that is in fulfillment of these rules and is in accordance with the representations made by the applicant(s) for the award; and

b. confirmation is received that all closing conditions specified in the Award Agreement and any other necessary preconditions to the funding of the award or the implementation of the project have been satisfied.

7. The award recipient shall be required to submit progress reports, describing the progress toward the performance objectives specified in the Award Agreement. Progress reports shall include a review and certification of the company's hiring records and the extent of the company's compliance with contract employment commitments.

8. In the event a party to the Award Agreement fails to meet its performance objectives specified in its Award Agreement with LED, LED shall retain the rights to withhold award funds, modify the terms and conditions of the award, and to reclaim disbursed funds from the company and/or public entity in an amount commensurate with the scope of the unmet performance objectives and the foregone benefits to the state or as may be otherwise provided by the Award Agreement between the parties.

9. In the event an applicant or other person is reasonably believed to have filed a false statement in its application or in a progress report or other filing, the LED shall immediately notify the district attorney of the parish of East Baton Rouge and may also notify any other appropriate law enforcement personnel so that an investigation may be undertaken with respect to the application of state funds to the project.

10. LED shall retain the right to require and/or conduct financial and performance audits of a project, including all relevant records, accounts and documents of the company and the public entity.

AUTHORITY NOTE: Promulgated in accordance with R.S. 36:104 and 36:108.

HISTORICAL NOTE: Promulgated by the Department of Economic Development, Office of the Secretary, LR 31:422 (February 2005).

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